

# The right to health of prisoners serving life imprisonment in International Law and Comparative to Vietnamese Law

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**Abstract:** The current context, with the global trend of abolishing and limiting the death penalty, has led many countries and regions to move to impose life imprisonment as the ultimate punishment for, particularly serious offenders. Therefore, international legal standards on imprisonment have developed very strongly to create conditions for prisoners to have access to human rights during the execution process. In particular, meeting the requirements of health care of prisoners serving life imprisonment is an important content both in terms of theory and law enforcement practice. By analyzing the standards of ensuring the health care of prisoners serving life imprisonment in international legal documents and comparing with the Vietnamese legal system. The article will ask and answer 03 questions:

- (1). Provisions of international law on measures to ensure the health of prisoners serving life sentences
- (2). Comparing the standards of international law and Vietnamese law on health care for prisoners serving life sentences
- (3). Assess the compatibility of Vietnamese law with international legal standards.

**Keywords:** International law, Vietnamese law, prisoner health, life imprisonment.

## 1. Introduction

Life imprisonment is a common being imposed to replace the death penalty in many countries and territories around the world, and life imprisonment is a sentence that gives the state the right to keep a person in prison for life, possibly until they die there.

Currently, according to statistics, formal life imprisonment in 183 countries and territories and 65 countries use sentences of life without parole. At least 64 countries have provision for informal or de facto life sentences and at least 50 countries have provision for post-conviction indefinite preventive detention, but there are almost certainly more. It is also the most severe penalty in current international criminal courts and tribunals<sup>2</sup>.

In international law, the term “life imprisonment” has different meanings in different jurisdictions. In some countries, it means that life-sentenced prisoners have no right to be considered for release.

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<sup>2</sup> This sentence, which can give the state the power to detain a person until they die, is unnecessarily punitive and often disproportionately used for low-level, non-violent crimes. Furthermore, 64 countries impose life without parole, inflicting cruel, inhuman and degrading punishment, and denying prisoners the fundamental right to hope).

(The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) state that rehabilitation to reduce recidivism is a key purpose of imprisonment. Life imprisonment often goes directly against this aim, by removing the prospect of rehabilitation and thereby undermining the right to human dignity).

Life imprisonment: A practice in desperate need of reform, < <https://www.penalreform.org/blog/life-imprisonment-a-practice-in-desperate-need-of/> >, accessed 10 th Aug 2021.

In others, life-sentenced prisoners are routinely considered for release after a certain period. There are also other sentences that are not formally identified as life imprisonment, but which have the power to detain a person in prison until death<sup>3</sup>.

According to previous studies, the prison environment is judged to be harmful to the health of detainees. In the words of the WHO, “Ill-health thrives in settings of poverty, conflict, discrimination and disinterest. Prison is an environment that concentrates precisely these issues”. At the same time, prisoners serving life sentences, they still have natural needs and interests as a natural entity because they are human beings so they enjoy natural, inherent, and objective rights. Therefore, the State has the responsibility to ensure such rights, regardless of the extent to which they committed crimes, the reasons for their arrest, they are still entitled to uphold their human rights and be protected by law. The court or any judicial body accepts their records despite claims to deprive them of their freedoms, but there is no denying the human rights of this group<sup>4</sup>.

Hence, ensuring the minimum conditions for those serving prison sentences in general and prisoners serving life sentences, in particular, is a mandatory requirement in international law and Vietnamese law.

For the purpose, not only for the punishment, education, and rehabilitation of life imprisonment, ensuring health care for them is one of the important issues that each country should always pay attention to and prioritize in the policy of treating prisoners, Vietnam is no exception. The UN Committee on Economic, Social and Cultural Rights, the independent expert body which monitors state compliance with the obligations under the International Covenant on Economic, Social and Cultural Rights, has stated, “Health is a fundamental human right indispensable from the exercise of other human rights”. On this basis, the health status of prisoners is a measure to assess the degree to which the rights of persons in detention are”.

Ensuring the health of prisoners serving life sentences is expressed in many contents and is recorded in many international legal documents, within the scope of the article " The right to health of prisoners serving life imprisonment in International Law and Comparative to Vietnamese Law", the following rights will be analyzed and clarified: (1). A right to medical care; (2). A right to timely medical attention; (3). A right to mental health care; (4). A right to adequate living space; (5). A right to hygienic living conditions.

## **2. The theoretical basis for ensuring the health of prisoners serving life imprisonment**

### **2.1. Overview of life imprisonment in the world and Vietnam**

The penalty of life imprisonment does not exist in the laws of all countries. Portugal was the first country in the world to abolish the life sentence with the prison reform of Sampaio E Melo in 1884. Many countries have abolished this penalty and are very clear in the Constitution, such as Brazil (Clause 19, Article 84 of the Constitution stipulates that the maximum duration of the penalty is 30 years).

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<sup>3</sup> Life imprisonment - A policy briefing

< [https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI\\_Life-Imprisonment-Briefing.pdf](https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf) >, accessed 10 th Aug 2021.

<sup>4</sup> Nguyễn Mậu Hiếu, Bảo đảm quyền con người của phạm nhân từ thực tiễn thi hành án phạt tù và một số kiến nghị, Journal of Procuratorate Science, Thematic number 4/2020, pp. 126.

In Europe, the countries that abolished life imprisonment were Spain, Serbia, Croatia, Bosnia, Portugal; of which only Portugal stipulates that the maximum term of the penalty is 25 years, other countries are 40 years; In Austria, life imprisonment means that the prisoner must be imprisoned until he or she dies. However, in fact about 15 years after the conviction the person can be released after having been granted bail and pledged not to continue to break the law. Life in the country will not apply to persons under the age of 21 at the time of committing an offense. These people may face a prison term of 20 years; In Belgium, life sentences are automatically changed to 30 years. And after the convict has spent about a third of that time, it can be considered for release; In Norway, life imprisonment is limited to 21 years. In fact, two-thirds of that time, they can be pardoned.

In Africa, the Republic of Congo has also abolished the life imprisonment penalty and the maximum limit to 30 years in prison; In South and Central America, Honduras, Nicaragua, El Salvador, Costa Rica, Colombia, and Venezuela have abolished life sentences, the maximum prison sentence in Honduras is 40 years, while in Costa Rica it is 50 years and Colombia is 60 years.

Most countries with life imprisonment do not impose this type of punishment on juvenile offenders. However, there are exceptions, as many countries still impose life imprisonment without parole for juvenile offenders such as Australia, Argentina, Cuba, Antigua, Sri Lanka, USA.

Country	Life-sentenced prisoners	Percentage of sentenced prisoners	Per 100,000 of national population
France	466	0.8	0.7
Germany	1,953	3.6	2.4
India	71,632	53.7	5.5
Kenya	3,676	11.4	8.2
Russia	1,766	0.4	1.2
South Africa	13,190	10.5	22.7
United Kingdom	8,661	11.0	13.4
United States	161,957	9.5	50.3

**Table: Number and ratio of prisoners serving life imprisonment in 2014<sup>5</sup>**

In Vietnam, according to Article 39 of the Criminal Code 2015 (amended and supplemented in 2017), it is stipulated: *"Life imprisonment is indefinite imprisonment imposed upon people committing extremely serious crimes but not punishable by death. Life imprisonment shall not be imposed upon offenders under 18 years of age (hereinafter referred to as juvenile offenders)"*. Thus, under this provision, a person under the age of 18 at the time of violating the criminal law,

<sup>5</sup>Life imprisonment - A policy briefing  
[https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI\\_Life-Imprisonment-Briefing.pdf](https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf),  
 accessed 10th Aug 2021.

no matter how dangerous such behavior, will not be sentenced to life imprisonment when the trial is imposed. Besides, life imprisonment does not mean that prisoners will have to spend their entire lives in prison. Normally, according to the humanitarian policy of the State of Vietnam, prisoners sentenced to life imprisonment can be released from prison, the time of release sooner or later depends on whether or not the person seriously carries out the sentence. If they do well, they can be released from prison after 20 years of being sentenced, or later than 30 years. Other cases, such as elderly or critically ill inmates, are considered for release from prison ahead of time.

Life imprisonment is like term prison in which this penalty deprives the convict of their freedom, isolates them from society for rehabilitation, education, and crime prevention. But unlike term prison, life imprisonment has no term, meaning it has the potential to deprive the convict of their freedom for the rest of their life.

With the nature of being a heavier sentence than term imprisonment and lighter than the death penalty, life imprisonment helps to implement the way of dealing with crimes in line with the complex and diverse realities of the criminal situation. Normally in practice, the penalty of life imprisonment is applied to cases where if the term of imprisonment (although maximum - 20 years) is still light, but if the death penalty is not necessary.

Legally, between life imprisonment and the death penalty, there are no clear boundaries on the conditions of application. Article 39 of the Penal Code 2015 provides for the conditions for the application of life imprisonment in a general form: "... imposed upon people committing extremely serious crimes but not punishable by death". For most special serious crimes, the Penal Code 2015 usually provides for both life imprisonment and the death penalty in the same sanctions for the court to choose to apply to specific cases of crime.

Vietnamese law in addition to tough and highly deterrent penalties also emphasizes humanity, so when the person is sentenced to life imprisonment in certain cases, it will still be reduced to a term of imprisonment when meeting certain requirements.

As a type of punishment in the penalty system, life imprisonment has common characteristics of punishment such as:

- (1). This penalty is the strictest coercive measure of the State against the person committing the crime
- (2). Punishment associated with crime
- (3). Penalties imposed by courts on convicts
- (4). Penalties must be specified in the Penal Code
- (5). The penalty shall apply only to persons at fault for committing crimes.

In addition, life imprisonment has its characteristics, to distinguish it from other penalties in the penalty system:

- (1). The severity of the life imprisonment penalty is second only to the death penalty

(2). The life imprisonment penalty is the only prison sentence that can be substituted for the death penalty

(3). Life imprisonment is not flexible when applied.

## **2.2. Why is it necessary to ensure the health of prisoners serving life imprisonment?**

Ensuring human rights in general and ensuring human rights in the execution of criminal judgments in particular are expressed in many aspects such as economic security, political guarantee, social security, legal guarantee. In particular, legal security is a key factor that forms the core values to ensure human rights in the process of serving prison sentences. Legal guarantees on human rights in the execution of prison sentences are expressed in two aspects:

(1). Ensuring personal security for individuals against the possibility of being violated by their cellmates and judgment enforcement agencies and prison administrators

(2). Ensure the necessary conditions for prisoners to fully enjoy their other human rights following the law<sup>6</sup>.

In countries where the death penalty is not prescribed, life imprisonment is the punishment that represents the strongest and strongest condemnation of the State and society for criminal acts. The health care for those serving life imprisonment not only stems from the punishment that should always be accompanied by education, rehabilitation, ensuring the minimum living conditions for them but thereby also demonstrating the humanitarian nature of the rule of law.

Since the life imprisonment applies to people committing extremely serious crimes – these are considered to be of the leading danger to society, ensuring the right to health care for this group of people needs to be focused more because: They are under tremendous mental pressure from the sins they have committed (intertwined with many emotions: torment, pain, remorse, hatred, obsession, depression, anxiety disorders, psychotic disorders... ), these conditions can influence thoughts, feelings, behaviour, stress levels and decision making. In addition, they have to live in prison much longer than fellow prisoners of other criminal groups, they also face the most with fellow prisoners with the same psychological "crisis" and they are also most at risk of facing illegal violations, abuse from dangerous prisoners.

Moreover, violence in prisons is the main cause of the need to ensure health care for prisoners serving life imprisonment: Violence in prison settings has many causes. The closed, often vastly overcrowded, living conditions also lead to hostilities between prisoners. The tedious prison environment, lack of occupation of mind and body and just plain boredom, lead to accumulated frustration and tension. This environment leads the way to high-risk activities, such as use of drugs and illegal sex. Some indulge in these activities to combat boredom. Others, however, are forced to engage in them, in a coercive play for power or monetary gain. Risky lifestyles can lead to the transmission of diseases from one prisoner to other prisoners, and pose a serious public health risk

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<sup>6</sup> Nguyễn Thị Thanh Trâm, Bảo đảm quyền con người trong thi hành án phạt tù, Số 5 (350)-2021, Tạp chí Dân chủ và Pháp luật, pp.15.

if unchecked. Contracting any disease in prison is not part of a prisoners sentence. This fact becomes even more significant when the disease is potentially fatal, as is the case with HIV/AIDS<sup>7</sup>. Life-sentenced prisoners are often subjected to impoverished regimes compared to other prisoners, including poor living conditions, restricted human contact and little or no access to meaningful activities or rehabilitation programmes. Contact with the outside world is often limited for life-sentenced prisoners, despite it being vital for promoting their rehabilitation and protecting their mental wellbeing.<sup>8</sup>

In a comprehensive global survey, researchers in Texas and England have concluded that improving the mental and physical health of prisoners will improve public health. Specifically, in their article, "The health of prisoners," Seena Fazel of the University of Oxford and Jacques Baillargeon of the University of Texas Medical Branch at Galveston, write that caring for the mental and physical health of prisoners has a direct and important impact on public health that should be recognized. "Prisoners act as reservoirs of infection and chronic disease, increasing the public health burden of poor communities," they write.

The authors noted that many prisoners with serious mental illnesses such as schizophrenia and other psychotic disorders cycle in and out of the prison system. For these individuals, linkage to appropriate community-based psychiatric care is critical if we are to remove them from this cycle of recurrent imprisonment.

The authors recommend that health-care resources be targeted at prisons since they provide an opportunity for screening, prevention, and early intervention. Failure to prevent disease, reduce transmission, or treat conditions at an early stage may result in inefficient use of scarce public resources for health care. Statistics on prisoner health should be publicly available and national, prison-specific policies and guidelines should be developed. There should be a discharge program for released prisoners that links them to community health programs to ensure effective treatment<sup>9</sup>.

In the case of prisoners released after long-term imprisonment. The right to health care during their "very long" sentence is important. If the State does not guarantee the conditions of health care (even the minimum) for them, it will have the following consequences: Returning prisoners with health problems may be unable to engage in work or other activities because of pain or sickness, and their families may be unwilling or unable to serve as fallback support. Those with severe or unmanaged health problems face an increased risk of adverse outcomes, including physical illness, relapse into drug use or, particularly in the case of mental illness<sup>10</sup> and then continue "to follow the beaten track" with violations of the law, inappropriate behavior with social norms.

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<sup>7</sup> Healthcare For Prisoners in India, < <http://www.legalservicesindia.com/articles/pri.htm> >, accessed 10th Aug 2021.

<sup>8</sup> For example, see United Nations Office at Vienna, Crime Prevention and Criminal Justice Branch, Life Imprisonment, Vienna, United Nations, 1994, para. 44.

<sup>9</sup> Care for prisoners will improve public health, researchers say, < <https://www.sciencedaily.com/releases/2010/11/101118194605.htm> > accessed 10th Aug 2021.

<sup>10</sup> Effects of Life Imprisonment and the Crisis of Prisoner Health, < [file:///C:/Users/os/Downloads/Fleury-Steiner-2015-Criminology\\_Public\\_Policy.pdf](file:///C:/Users/os/Downloads/Fleury-Steiner-2015-Criminology_Public_Policy.pdf) >, accessed 12th Aug 2021.

For this reason, successful treatment of returning prisoners' health conditions could increase their chances of reentry success by improving their ability to work, support themselves, and abstain from substance use, all of which have been shown to contribute to desistance from criminal activity in the community.

### **3. Provision of international law and Vietnamese law on health care for prisoners serving life imprisonment**

As analyzed, the right to guaranteed health care for prisoners in international law and Vietnamese law is a mandatory requirement, stemming from the responsibility to ensure the life of all citizens and persons who exist and live in a state; At the same time, it is also a legal obligation that binds all countries if they want to participate in the current international "common playing field".

Theoretically, although life imprisonment is a "special" punishment (a punishment capable of replacing the death penalty; the most severe punishment for countries that do not prescribe the death penalty), but ensuring the right to health care for those serving this sentence is still regulated in the same way as ensuring the health of prisoners serving different types of sentences in prisons. In fact, in Vietnam, prisoners serving life imprisonment and prisoners serving other types of sentences (with fewer years of detention), are still held at the same facility (For instance: Tong Le Chan K1 prison in Minh Tam Village, Huong Quan District, Binh Phuoc Province or Phu Son 4 prison in Son Cam Village, Phu Luong District, Thai Nguyen Province... with prison sentences ranging from 6 months to life imprisonment, the only difference is that they will be held in different areas of the same camp.

Hence, the author will still use the provisions of international law and Vietnamese law in the health care for prisoners (in general) to analyze with prisoners serving life imprisonment. This stems from the fact that the person serving life imprisonment still belongs to the system of managing the person serving the prison sentence (in general), and in fact, the treatment of prisoners to life imprisonment of the State is basically "nothing different" than that of ordinary prisoners.

#### **3.1. Provisions of international law**

Accordingly, the right to health of prisoner serving life sentence within international human rights treaties: The right to health of prisoners is articulated within economic, social and cultural rights, under which the right is universal and non-discriminatory in application. It also finds expression within civil and political rights mechanisms. The UN Human Rights Committee, the independent expert body which monitors state compliance with the obligations under the International Covenant on Civil and Political Rights, has stated for example that although there is no specific right to health provision within the Covenant, questions of health in detention could be raised under the right to life (Article 6) or the right to humane treatment (Article 10)<sup>11</sup>.

Likewise to the Preamble of the WHO Constitution, "*The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of*

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<sup>11</sup> The right to health of prisoners in international human rights law, < <https://www.hr-dp.org/files/2013/09/22/Right-to-Health-IJPH-2008.pdf> >, accessed 12th Aug 2021.

*race, religion, political belief, economic or social condition*’’. As such, the WHO defines the right to health as universal, and therefore entitled to all persons whether inside or outside of prison. Based upon the WHO Constitution, the “right to health”, as it has come to be understood in human rights discourse, has been enshrined in human rights treaties and other instruments at both the UN and regional levels. Within the United Nations system, the first treaty to guarantee the right to health is the International Covenant on Economic, Social and Cultural Rights, which was adopted in 1966 and entered into force 10 years later. Article 12 of the Covenant affirms “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”<sup>12</sup>.

The International Covenant on Civil and Political Rights (ICCPR) does not expressly provide for a right to health care. However, the United Nations (UN) Human Rights Committee’s (HR Committee) position is that adequate or appropriate and timely medical care must be provided to all detainees as part of state duties to ensure the enjoyment by all persons of the following rights:

Article 6 on the right to life: *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. [Art. 6(1)]”*,

Article 7 on the prohibition on torture or cruel, inhuman or degrading treatment and punishment: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. [Art. 7(1)]”*,

Article 10 on the right to human treatment of prisoners: *“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. [Art. 10(1)]”*.

In the same way, the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which were adopted unanimously by the UN General Assembly in 2015<sup>13</sup> to reinforce the obligation of States to provide medical care and treatment for sick prisoners:

Rule 24: *“1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.*

*2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence”*.

Rule 25: *“1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying*

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<sup>12</sup> Cited previously.

<sup>13</sup> General Assembly Resolution 70/175, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (17 December 2015).



*particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.*

*2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner”.*

Rule 26: *“1. The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file.*

*2. Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality”.*

Rule 27: *“1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.*

*2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff”.*

There are also provisions on the right to care for the health of prisoners in some areas: The Inter-American Human Rights System with American Convention on Human Rights:

The American Convention on Human Rights (ACHR) provides the broadest right to healthcare for prisoners. Article 4 provides the right to life: *“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [Art. 4(1)]”*; Article 5 provides the right to humane treatment for prisoners: *“No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. [Art. 5(2)]”*.

The European Human Rights System with European Convention on Human Rights: The European Convention on Human Rights (ECHR) does not expressly provide a right to healthcare. Article 2 on the right to life and Article 3 on the prohibition of inhuman treatment provide a duty on the State to provide adequate medical assistance.

And The African Human Rights System: African Charter on Human and Peoples’ Rights: Article 16 of the African Charter on Human and Peoples’ Rights (ACHPR) enshrines the right to enjoy

the best attainable state of physical and mental health. It also recognizes the obligation of States to protect the health of their people and to ensure that they receive medical attention<sup>14</sup>.

## **Defining lawful health standards in prisons for prisoners serving life imprisonment**

### ***a. A right to medical care***

As described in the Basic Principles for the Treatment of Prisoners: “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation”<sup>15</sup>. The UN Principles of Medical Ethics state that all health personnel working with prisoners “have a duty to provide them with... treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained”<sup>16</sup>.

Medical care for detainees and prisoners is also guaranteed in international humanitarian law under the Geneva Conventions, particularly in Convention (III) relative to the Treatment of Prisoners of War and Convention (IV) relative to the Protection of Civilians in Time of War. Article 13 specifies that Geneva III articulates specific medical standards and protocols that must be observed by the Detaining Power, including access to free medical services in “an adequate infirmary”.

The 1988 United Nations Resolution "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment" goes further than these other resolutions, holding in Principle 24 that “medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.” While prisoner medical copayments may not have been invented when the 1955 Minimum Rules were being drafted, by the 1980s their oppressive character was clear enough for the international community to ban them<sup>17</sup>.

### ***b. A right to timely medical attention***

According to the Standard Minimum Rules: “The medical officer... should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed”. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment specifies that “medical care and treatment shall be provided whenever necessary”. Medical services found cruel, inhuman, or degrading generally occur in a context where the applicant is clearly in need of medical attention, such as following beatings or torture, or when he or she is ill or injured. The failure to provide medical attention in this context, which unnecessarily exacerbates the pain and suffering of the prisoner, may quickly lead to treatment deemed inhuman or degrading<sup>18</sup>.

### ***c. A right to adequate living space***

To ensure the health of prisoners serving life imprisonment, the condition is that they have a living space that conforms to reasonable standards, to protect them in a long-term detention environment.

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<sup>14</sup> Grace Cheung (2019), Prisoners’ Right to Medical Treatment International Law Provisions, NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

<sup>15</sup> Basic Principles for the Treatment of Prisoners (note 96) para 9.

<sup>16</sup> Principles of Medical Ethics (note 94) art 1.

<sup>17</sup> International Law and Prisoner Health,

< [https://www.prisonpolicy.org/articles/int\\_law\\_health112403.html](https://www.prisonpolicy.org/articles/int_law_health112403.html) >, accessed 15th Aug 2021.

<sup>18</sup> Cited previously

In this regard, The UN Human Rights Committee considers that a lack of adequate living space not only contributes to a violation of the right to dignity and humane treatment, but also to conditions that breach the rights to life and health.

The UN Committee against Torture has also identified “serious overcrowding” as one of the “poor prison conditions that affect the health of both inmates and wardens”. The Special Rapporteur on Torture has noted the impact of overcrowding on health, stating that, “overcrowding exacerbates the inability of the staff to provide adequate... health care to the detainees. It also makes it difficult to prevent the spread of infectious diseases”<sup>19</sup>.

Prison overcrowding has always been a serious problem, correlated with increased violence, lack of adequate health care, limited programming, and educational opportunities, and reduced visitation. But during the current pandemic, overcrowded prisons - and even prisons operating at levels approaching capacity - are more deadly than ever. In a recent study of Texas prison capacity, COVID-19 infection rates, and mortality, researchers found that prisons holding between 94 and 102% of their capacity had higher infection rates and more deaths than prisons operating at 85% of their total capacity, suggesting that a prison’s crowdedness correlates with viral spread<sup>20</sup>.

#### ***d. A right to hygienic living conditions***

Sanitary facilities that are in good condition, clean, sufficient in number and easy to access are essential to ensure the hygiene and dignity of *prisoners serving life imprisonment*, as well as to avoid the transmission of certain infectious diseases. If the sanitary needs of detainees are not met this may constitute cruel, inhumane or degrading treatment, or even torture.

The toilets or latrines should be directly accessible from the cell, and separated by a door or partition. In all cases, prisoners serving life imprisonment must be able to satisfy their bodily needs when they need to and with their dignity being respected. There must be sufficient showers so that prisoners serving life imprisonment can use them as often as necessary, preferably daily and following the general principles of hygiene.

In this regard, the UN Human Rights Committee argues that "poor" or "lack of" sanitary facilities in prisons have contributed to both deaths in custody, high rates of infectious diseases and that this is a condition that leads to health damage of prisoners. The UN Human Rights Committee also concluded that: The failure of the State to provide proper toilet or washing facilities, or clean living conditions, can not only negatively affect the health of detainees, but potentially breach international law.

#### ***e. A right to mental health care***

In many countries, violence and coercion between prisoners can lead to serious health risks. Physical assaults – even murder – can occur in remand prisons and sometimes even in colonies.

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<sup>19</sup> Commission on Human Rights ‘Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1994/37 Addendum: Visit by the Special Rapporteur to the Russian Federation’ (16 November 1994) UN Doc E/CN.4/1995/34/Add.1 para 41.

<sup>20</sup> Since you asked: Just how overcrowded were prisons before the pandemic, and at this time of social distancing, how overcrowded are they now? < <https://www.prisonpolicy.org/blog/2020/12/21/overcrowding/> >, accessed 18th Aug 2021.

Assaults occur between prisoners and prison guards, and even more so between prisoners themselves. Violence between prisoners – and particularly sexual assault - is vastly underreported. Not only does this problem cause serious damage to physical health, but it leaves a terrible obsession with mental health for people serving life sentences. At the same time, the person serving life imprisonment must live a very long time in prison (a minimum of 20-30 years, and most of them are for life) so the stifling emotions exacerbate mental illness.

The COVID-19 outbreak has exacerbated the mental health of *prisoners serving life imprisonment*, despite cell confinement protection against transmission of the virus, being “cooped up”, “caged” and “isolated” was said to be “suffocating” at times. All the usual outlets for typical “pains of imprisonment” had been removed (such as seeing family, engaging in peer relationships, attending work or psycho-social courses). When coupled with social isolation and inactivity for long periods, this led to deteriorating mental health in many.

Being confined within a cell for many hours a day with little interaction made it difficult to remain upbeat and motivated. Some lost their sense of purpose and experienced increased thoughts of powerlessness. Boredom exacerbated the problems of loneliness, with little to divert individuals from their thoughts. Long days with little to do resulted in overthinking about other problems in life. People talked about how overthinking could lead to increased anxiety levels, paranoia, or catastrophic thinking for some. This remained a prominent theme for worsening mental health<sup>21</sup>.

In this regard, the Standard Minimum Rules specify that all prisons should have a psychiatric service to diagnose and treat mental illness. The requirement that mental health services be provided to prisoners is codified in a number of non-binding instruments on prison health, including the European Prison Rules 260 and Recommendation 1235 (1994) on Psychiatry and Human Rights of the Council of Europe<sup>22</sup>. The case with general health decline, deterioration of mental health while in custody may be considered an indication that the overall prison conditions are cruel, inhuman or degrading, and therefore in violation of international law.

(For example, in Germany: The German Code of criminal procedure includes regulations for the release of prisoners in cases of severe mental illness and life-threatening diseases (Strafprozessordnung, 2010). If patients are already in prison, the punishment can be discontinued in such cases. One important factor is that punishment can be discontinued if a health problem cannot be treated within the prison system. For example, in the State of Berlin, there are no psychiatric beds for female offenders within the system. In all cases of interrupted imprisonment, the goal is to reduce relevant security risk for the community. Otherwise, the inmates must stay in prison even if they cannot be treated there. However, patients can be brought out of prison to public institutions or hospitals for treatment, as prisoners (§ 65 Strafvollzugsgesetz, 2011))<sup>23</sup>.

### 3.2. Provisions of Vietnamese law

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<sup>21</sup> The Impact Of Prison Lockdown On Mental Health < <https://www.russellwebster.com/the-impact-of-prison-lockdown-on-mental-health/> > accessed 18th Aug 2021.

<sup>22</sup> Cited previously

<sup>23</sup> Marc Lehmann (2012), "Psychiatric care in the German prison system", International Journal of Prisoner Health, Vol. 8 Iss3/4 pp. 131 – 140.

In Vietnam, protecting and ensuring human rights is the responsibility of the whole political system, including the Communist Party of Vietnam, state agencies, socio-political organizations, social organizations, media agencies, the press, the whole society in general... In particular, in the field of detention, the responsibility first belongs to the competent agencies in the field of execution of criminal judgments.

For life imprisonment, the provisions on the rights and obligations of people are serving life sentences are adjusted as prisoners serving other types of sentences in the same detention facility, they are entitled to physical and spiritual living conditions that meet the needs of daily life. Thereby demonstrating the policy of clemency and humanitarian of the State of Vietnam and meeting the common global goal of considering people as the center of all efforts and development of the country. Last time, the State of Vietnam has participated in many international documents to ensure human rights, such as International Covenant on Civil and Political Rights 1966 (ICCPR) và International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) (joined on September 24, 1982). Until November 7, 2013, Vietnam has signed up to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT). Joining UNCAT has created additional legal grounds to ensure the health care rights of people are serving life imprisonment.

Institutionalization of the Constitution of the Socialist Republic of Vietnam 2013 on the guarantee of human rights, civil rights, Law on Execution of Criminal Judgments 2019 has stipulated the rights for prisoners in general and people are serving life imprisonment in particular in Article 27, including health care rights, as follows: “*a) Have their lives, health, assets, dignity protected and respected; b) Receive board and lodging, clothes, personal care, health care as prescribed; receive letters, gifts, money; read books, newspaper, listen to the radio, watch television in conformity with conditions of the place where they serve the sentence; c) Participate in physical training and sports, cultural and performance activities; đ) Meet and contact with relatives, representatives of agencies, organizations, and individuals; or have consular visit and contact in case of foreign inmates; h) Participate in voluntary social insurance, enjoy policies on social insurance as per the law; i) Use prayer books, express religious belief and faiths as per the law;*”.

Concretize the above contents, Law on Execution of Criminal Judgments 2019 continues to detail Regimes for Board, Clothing, Lodging, Daily Living and Health Care for Inmates in Section 2, Chapter III: Article 48. Regime for board and lodging for inmates; Article 49. Regime for clothing and personal belongings of inmates; Article 50. Regime for physical exercise, sports and cultural and art activities and use of prayer books, expression of belief, religions of inmates; Article 51. Regimes toward female inmates who are pregnant or raising children under 36 months of age; Article 54. Regime for communication of inmates; Article 55. Regime for medical care for inmates. Law on Execution of Criminal Judgments 2019 in addition to regulations on the principle of humanitarian ensure; respecting the honor, dignity, legitimate rights and interests of judgment-serving persons, there are additional provisions prohibiting torture and cruel, inhuman, or degrading treatment or punishment of judgment-serving persons.

According to the Prison Work Review Report, compulsory educational institutions, reform schools of The Police Department manages prisons, compulsory educational institutions, reform schools (C10)-The Ministry of Public Security, in recent years, the guarantee of human rights in prisons

has achieved certain results, such as the floor area is located on average 2.1m<sup>2</sup>/inmates. The food processing area has a public economic table stating the standards in daily and monthly meals. Each inmates is spent in addition to the state's general standards from VND 20,000 to VND 30,000/month, this amount is extracted from the results of the inmate's labor. Meals are always quality guaranteed. The infirmary for inmates is located in a quiet corner, always with a doctor on duty<sup>24</sup>.

### **Some shortcomings in legal provision on health ensuring for people are serving life imprisonment**

Law on Execution of Criminal Judgments 2019 has overcome limitations in the implementation of Law on Execution of Criminal Judgments 2010, which can be considered an important step towards ensuring human rights in the process of execution. However, the law still has some shortcomings as follows:

Firstly, Article 30 (2) (đ) of the Law on Execution of Criminal Judgments 2019 provides, the following inmates shall be held separately: *"Inmates showing signs of mental diseases or other diseases that have deprived them of the consciousness or act control capacity pending a court decision"*. However, under the criminal judgments enforcement law, prison supervisor does not have the right to request judicial expertise. This causes many difficulties in the practice of detaining inmates and can also become a loophole to take advantage of the practice of torture.

Secondly, Law on Execution of Criminal Judgments does not specify the use of detention instruments during judgment and judicial assistance. The use of detention tools such as cribs, shackles, hand shackles<sup>25</sup>... is easy to affect the morale of the person serving a life sentence.

Thirdly, according to Article 24 The 2013 Constitution: *"1. Everyone shall enjoy freedom of belief and religion; he or she can follow any religion or follow none. All religions are equal before the law; 2. The State respects and protects freedom of belief and of religion; 3. No one has the right to infringe on the freedom of belief and religion or to take advantage of belief and religion to violate the laws"*. These are very progressive provisions of Vietnamese law on protecting the freedom of human belief thought. However, the Law on Execution of Criminal Judgments does not have specific provisions to implement this content into real life, so it does not meet the mental health needs of the people are serving life imprisonment. On the other hand, for those serving life imprisonment, mental health is a very important factor as a foundation for them to "maintain" their beliefs in reeducation during the constant days in prison. So the restrictions on beliefs, religions, and beliefs will somewhat "hurt" the mental health of this group of people.

At the same time, through law enforcement practices, some of the following limitations have been revealed:

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<sup>24</sup> Nguyễn Mậu Hiếu, Bảo đảm quyền con người của phạm nhân từ thực tiễn thi hành án phạt tù và một số kiến nghị, Journal of Procuratorate Science, Thematic number 4/2020, pp. 127.

<sup>25</sup> Nguyễn Thị Lan, Một số kiến nghị để hoàn thiện pháp luật thi hành án hình sự Việt Nam nhằm bảo vệ quyền con người của người chấp hành án phạt tù, VNU Journal of VNU Journal of Science: Legal Studies, Vol. 31, No. 3 (2015), pp.34.

Firstly, in the organization of detention enforcement, acts of infringing on the life, health, honor, and dignity of people are serving life imprisonment still occur, there are cases of death in prisons. Along with that, the act of fighting, intentionally causing injury between inmates is still complicated with behaviors such as intentionally transmitting HIV or killing a cellmate.

Secondly, overcrowding and current prison degradation will exacerbate facilities that are often weak and cannot guarantee minimum standards of treatment for inmates, and thus threaten the right to health care for people who are serving life imprisonment. Overcrowding includes residential floor space, toilet, the temperature in the room... These problems further promote the possibility of infection with infectious diseases. Recently, according to press reports reflected from June 27 to July 5, 2021, Chi Hoa detention center (Ho Chi Minh City) has detected a total of 81 cases infected with COVID-19, including staff and inmates. Notably, on July 13, 2021, a death row inmate infected with COVID-19 escaped from Chi Hoa Detention Center, then on July 16, the authorities arrested the death row inmate and returned him to the detention facility.

Thirdly, contrary to international standards, people are serving life sentences often detained in unsecured material conditions, in addition to special restrictions that reduce their ability to communicate with the outside world. Such restrictions can be mentioned as being separated from other inmates and prohibited from communicating with them, shackled, until the restriction of visitation rights from family and friends. These treatments have a serious psychological impact, which can be seen as an act of mental torture of the person serving a life sentence. In addition, many argue that life imprisonment reduces the ability of inmates to integrate into society later and causes mental health problems including loss of self-esteem and the weakening of social skills leading to a tendency to gradually become socially isolated<sup>26</sup>.

#### **4. Comparison of Vietnamese law and international standards for health care of prisoners serving life imprisonment**

##### **4.1. Compatibility of Vietnamese law concerning international standards**

From the analysis of international legal standards and Vietnamese law, it can be seen that Vietnamese law is fundamentally compatible with international provisions in ensuring the health care of prisoners for life imprisonment that are most clearly expressed in the provisions of Law on Execution of Criminal Judgments 2019:

First, on the right to health care: people who are serving life imprisonment in Vietnam have access to health care available by a professional and effective medical team in the detention facility itself, which is consistent with international medical standards such as timely and available nature that is not based on discrimination about legal status. This means that prisoners serving life imprisonment even if they are serving a particularly serious sentence such as murder or corruption (as prescribed by Vietnamese law), still receive the most attentive medical care as prisoners serving others (less serious crime, serious crime, very serious crime). Especially for pregnant women or raising children under 36 months of age, they receive regular health checkups to promptly ensure the best health care conditions for women and young children.

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<sup>26</sup> Trường Duy Kiên, Lý luận, pháp luật quốc tế và Việt Nam về quyền con người của phạm nhân (phần 2), Vietnam Journal of Human Rights Law, No. 1/2021, pp.12.

Next, prisoners serving life imprisonment upon arrival at the medical detention facility of detention facility shall examine and make a health monitoring slip. During the time they serve their sentences, the prison establishments shall be based on the conditions and duration of serving their prison sentences, and their specific situation in coordination with a district-level medical examination and treatment establishments or police hospitals or military hospitals where the prisoners' detention facilities shall organize general health examinations for designated prisoners at least every 02 years. The prison establishments regularly take measures to prevent and combat epidemics, food hygiene, safety, prevent natural disasters and accidents, and injuries.

In addition, the regime of wearing and equipping prisoners for life imprisonment is also guaranteed following the climatic conditions of the place of detention; to avoid injury during labor, prisoners are given 02 sets of protective clothing and necessary labor protection equipment each year.

Second, in terms of the right to adequate living space, international law holds that a certain number of prisoners should be limited in a prison to ensure that each prison does not have too many or too few prisoner; At the same time, international law also sets out the principle that the conditions of detention must ensure the health conditions and normal activities of the prisoners... These contents have been "internalization" in the provisions of Vietnamese law, specifically according to Clause 4, Article 48 of Law on Execution of Criminal Judgments 2019: The minimum seat of each prisoner is 02 m<sup>2</sup>. For female prisoners have small children, a minimum of 03 m<sup>2</sup> is arranged. Thus, under normal circumstances, each prisoner has at least 02 m<sup>2</sup> of space in the cell. This area is quite suitable for prisoners for life imprisonment to have a comfortable living space, be lived and renovated.

#### **4.2. The current challenges of Vietnamese law concerning international standards**

In addition to the achievements in ensuring health care for prisoners for life imprisonment, Vietnam's law enforcement practices still have certain challenges that are incompatible with international law, as follows:

First, under certain circumstances (though not often), prison overcrowding still occurs. This situation not only causes dangerous infectious diseases but also exacerbates tensions between prisoners serving life imprisonment with each other and (or) between prisoners and prison warders, leading to rebellions or protests, hurting themselves, or facilitating the formation of new crimes.

Secondly, due to the characteristics of life imprisonment, the executors have to live a very long time at the detention facility, at the same time the prison environment is very complex (fellow prisoners, detention facilities, managers ... ), where there are always risks negatively affecting the health of prisoners. As a result, prisoners sentenced to life in prison may face mental health disadvantages. Meanwhile, the practice of enforcing the law on their health care regimes remains inadequate, one of the reasons is the lack of funding to pay the salaries of mental health physicians. Salaries to pay for medical staff are often very low leading to abrasion of the motivation and goodwill of those responsible.

Third, recently, in some detention facilities in Vietnam, there has been a situation of prisoners infected with COVID-19, which is a warning about the "lax" situation in controlling people in and out of prisons, the responsibility is partly down with the managers. In the context of challenging conditions of detention, the emergence of the epidemic is a "vital" threat to the health of prisoners for life imprisonment.

#### **5. Conclusion**

Through analysis of the contents of international law on ensuring the health care of prisoners (the nature of punishment; why it is necessary to take care of the health of prisoners for life



imprisonment; international standards) and in comparison with the provisions of Vietnamese law, it can be seen that Vietnamese law is very close to the current general provisions on ensuring human rights in the field of criminal justice. The treatment of prisoners is not only intended to punish the sins they have committed against the community, but also through execution to help them to realize their mistakes through health care, creating optimal conditions for them to enjoy reasonable standards of living with their inherent dignity.

Although there are certain challenges, through the analysis of regulations, it can be seen that Vietnamese law has achieved certain achievements in ensuring the health of prisoners for life imprisonment, with an expanding human rights trend, not only concerned about the living conditions of free people in the community but also the regime special care for the group of people who have been deprived of their freedom.

The article sheds light on the contents of international regulations and applies to Vietnam's case, to consider the level of legal compatibility in ensuring the health care of prisoners for life imprisonment that are most clearly expressed in the provisions of Law on Execution of Criminal Judgments 2019, thereby assessing the advantages and challenges that law regulation and law enforcement practices are facing. Legal recommendations to remove and limit current inadequacies are a matter of which the article is still open, and therefore further research is needed to clarify this content.

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