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Introduction

1. In April 2009, during its first Universal Periodic Review (UPR), Vietnam received 8 recommendations relating to the death penalty. 3 were supported (reduce the number of offences subject to the death penalty¹ and revise legislation bearing in mind international standards, especially concerning transparency²) and 5 were noted.³ During its second UPR in 2014, Vietnam supported 182 and noted 45 from a total of 227 recommendations. Of the 29 recommendations concerning the death penalty, only 6 were supported by Vietnam.
2. This report considers Vietnam's progress in implementing the following recommendations which it supported in 2014: continue to reduce the number of offences subject to the death penalty⁴; consider restricting the use of the death penalty to "*the most serious crimes*", in accordance with Article 6 of the International Covenant on Civil and Political Rights (ICCPR), with a view to adopting a moratorium on executions⁵; reform towards abolition of the death penalty, including greater transparency around its use⁶; and apply the safeguards specified under international law in use of the death penalty.⁷
3. In June 2014, Vietnam said that certain recommendations were being supported due to the country's, "*consistent policy and commitments to the international community on human rights ... Strengthening policies, measures and resources for the promotion and protection of economic, cultural, social and political and civil rights in line with international norms ... observing obligations as provided in international conventions, guaranteeing rights of vulnerable groups.*"⁸ Vietnam rejected other recommendations⁹ arguing that they were deemed to have not gained universal recognition and/or were not suitable to the country's historical, social, and cultural particularities.¹⁰
4. Despite a limited reduction in the number of offences subject to the death penalty, which must be commended, offences which are not amongst "*the most serious crimes*" under internationally recognised standards are still subject to the death penalty, statistics relating to the death penalty remain shrouded in secrecy, and the limited information available shows that Vietnam executes at an extremely high rate. As such, Vietnam has failed to act in line with international norms, to observe its obligations as provided in international conventions, to guarantee the rights of vulnerable groups, or to properly implement most of the death penalty recommendations it supported.

Reduce the number of offences subject to the death penalty

5. In 2006, Vietnam's Ministry of Foreign Affairs commented, "*The Vietnamese State has pursued the policy of narrowing the scope of capital punishment, gearing towards its abolition in the future.*"¹¹ In 2009, the Penal Code was amended to reduce the number of offences attracting the death penalty to 22.^{12 13} During its 2014 UPR, Vietnam noted that other amendments were under consideration, including further reducing the number of death penalty-eligible offences and stricter conditions on the use of the death penalty.
6. In November 2015, Vietnam's National Assembly adopted a Penal Code to replace the 1999 Penal Code (as amended in 2009).¹⁴ The 2015 Penal Code, which took effect on 1 January 2018, removed the death penalty for some

additional offences, including possession of narcotics, and provided the right to a commutation to life imprisonment in certain limited circumstances.¹⁵ However, the Penal Code retained the use of the death penalty for other narcotics offences, including manufacturing, transporting, and trading in illegal drugs.

7. Vietnam's third Periodic Report states that compared to the 1999 Penal Code, the 2015 Penal Code, "...has determined clearly that death penalty is a special sentence only imposed upon people committing extremely serious crimes that infringe national security, human life, drug-related crimes, corruption-related crimes, and some other extremely serious crimes in accordance with the Code."¹⁶ The Report goes on to say that the death penalty applies to 18 of 314 crimes (5.73% of offences).
8. Reducing the number of offences subject to the death penalty is a welcome development. However, Vietnam's continued assertion that the death penalty should apply to offences which are not amongst the "*most serious crimes*" puts the country in contravention of international law and its obligations under the ICCPR.¹⁷

Restrict the use of the death penalty to "*the most serious crimes*"

9. Article 6(1) of the ICCPR provides that, "*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*". Under international standards, the death penalty is only lawful for the "*most serious crimes*".¹⁸ Vietnam ratified the ICCPR in 1982 and thereby accepted an obligation to ensure that its domestic laws meet the standards in the Treaty. As noted above, Vietnam purports to comply with international norms and its obligations in international conventions, but has failed to respect the position, which is well established under international law, that certain offences must not be subject to the death penalty.
10. The 18 offences currently subject to the death penalty in the 2015 Penal Code include economic crimes, for example, embezzlement and receiving bribes (Article 353 and 354); political crimes, including 6 so-called "*national security*" offences, for example, 'activities aiming to overthrow the government' (Article 109); and 3 drug-related offences, including manufacturing narcotic substances (Article 248), transporting narcotic substances (Article 250), and illegally dealing in narcotic substances (Article 251) of a specified type and over a specified quantity.
11. The UN Secretary General¹⁹, Human Rights Council²⁰, Human Rights Commission²¹, Special Rapporteurs²² and the Human Rights Committee (HRC) have taken the position that the "*most serious crimes*" are intentional crimes with lethal consequences, which do not include drug offences.²³ States, international tribunals, and courts all over the world have accepted the HRC's comments and observations as persuasive authority.²⁴ The view is shared by drug control bodies, including the UN Office on Drugs and Crime²⁵ and International Narcotics Control Board, both of which have called upon countries to abolish the death penalty for drug offences.^{26 27}
12. Whilst the 2015 Penal Code provides for conditional parole where certain conditions are satisfied for prisoners serving a term of years, this expressly does not apply to prisoners who have been sentenced to death for the manufacture, trading, or appropriation of narcotics (Article 66(2)), further weakening legal recourse for drug

offenders. In June 2015, the National Assembly's Standing Committee declared that miscarriages of justice were on the rise, with at least 71 wrongful convictions over the past three years.²⁸ There have been reports of mass trials where large numbers of alleged drug offenders were sentenced to death.²⁹

13. During its last UPR Vietnam said it would consider amending or repealing the national security provisions which restrict internationally recognised human rights in the country. However, the 2015 Penal Code actually added new national security provisions.³⁰ The 6 national security offences to which the death penalty currently applies are extremely broad and not clearly defined in the Penal Code or elsewhere. They could include freedom of expression, the right to peaceful assembly, and other internationally recognised rights. In 2013, then UN High Commissioner for Human Rights wrote to the Prime Minister of Vietnam highlighting that national security offences do not meet the threshold of "*most serious crimes*" under international law.³¹
14. Vietnam's mid-term UPR Report defended the national security provisions in the Penal Code as not being contrary to the relevant international conventions on human rights.³² There is, however, a fundamental inconsistency between Vietnam's interpretation of the ICCPR as providing for restrictions for the protection of national security and the growing body of international law providing that the death penalty, where used at all, may only be applied for the "*most serious crimes*" taken to mean intentional homicide resulting in loss of life.

Provide greater transparency over use of the death penalty

15. Statistics relating to the death penalty have been classified a state secret in Vietnam since 2004.³³ According to the most comprehensive public data on the death penalty in Vietnam, between 2001 and 2010 (excluding 2003 and 2004 for which there are no data), 1,421 death sentences were given (roughly 177 per year).³⁴ Of these, 40.04% involved drug trafficking offences and 55.52% involved murder. In 2011, a senior official at the Ministry of Public Security was quoted as saying that approximately 100 death sentences are imposed every year in the country.³⁵ In December 2014, Deputy Chief Justice of the Supreme People's Court reportedly said that 200 people are sentenced to death each year.³⁶
16. Figures published by the Minister of Public Security showed that 678 people were on death row as at November 2013. At least 110 prisoners had exhausted their appeals and were facing imminent execution.³⁷ According to official figures, 681 people were under sentence of death as at 1 July 2016.³⁸ The current number of people on death row can only be estimated given Vietnam's commitment to secrecy.³⁹ If Vietnam is genuinely committed to international norms and its obligations under international conventions, detailed and disaggregated statistics about the death row population and executions must be shared with the international community.

Impose a moratorium on executions

17. A report published in February 2017 by the Ministry of Public Security revealed that Vietnam executed a total of 429 people between 8 August 2013 and 30 June 2016, an average rate of 147 executions each year.⁴⁰ ⁴¹ These alarming figures make Vietnam one of the world's most prolific executioners in the period. This is despite Vietnam accepting a

UPR recommendation in 2014 to restrict the use of the death penalty with a view to adopting a moratorium on executions. Vietnam must be urged to impose a moratorium on executions to comply with its commitment made at the last UPR and in line with international norms and its obligations under international conventions.

Stop using the lethal injection as a method of execution

18. In 2010, Vietnam's National Assembly voted to replace shooting by firing squad with lethal injection.⁴² State-controlled media spread the message that this was a "humane" method for both the executor and the person being killed.⁴³ The law regulating this change specified the 3 drugs to be used in executions.⁴⁴ The law was scheduled to take effect on 1 July 2011 but its implementation was postponed.
19. In December 2011, the EU changed regulations concerning trade in goods that could be used for executions.⁴⁵ The Vietnamese Department of Security asked the National Assembly to allow the resumption of executions by firing squad to reduce the death row population.⁴⁶ In May 2013, Vietnam passed another law⁴⁷ to allow the domestic manufacture of vaguely defined drugs that could be used in lethal injections.⁴⁸ ⁴⁹ The government announced it would begin the executions of large numbers prisoners as soon as the law came into effect on 27 June 2013.⁵⁰ In 2013 the Minister of Public Security confirmed that Vietnam would produce its own poison.⁵¹
20. On 12 July 2013, the Presidents of the British (BMA), Danish (DMA), and German (BÄK) Medical Associations wrote to the Vietnamese Health Minister to express their "grave concern" about Vietnam's use of drugs in lethal injections, noting the "potential for executions resulting in excruciating pain".⁵²
21. Lethal injection depends on the intravenous administration of complex cocktails of medicines, a task which requires training and expertise. Medical professionals are prohibited from participating in executions by the Hippocratic principle of "first, do no harm". On this basis, medical associations around the world have warned their members that, whatever their position on capital punishment, they should not play any role in executions.⁵³ In April 2018, the Government of India rejected a petition to move to lethal injection, highlighting the "substantial risks and uncertainty" associated with having the lethal injection administered by untrained individuals.
22. Lethal injection has the highest failure rate of any execution method.⁵⁴ In some cases in the United States it has completely failed to kill prisoners,⁵⁵ failed so badly that officials have aborted the entire process,⁵⁶ or involved protracted periods with the use of experimental cocktails.⁵⁷ In July 2013, Nguyen Anh Tuan was executed by lethal injection in Vietnam. This was thought to be the first after Vietnam changed its execution method to lethal injection. It was reported that Tuan was given a home-made selection of poisons which took two hours to kill him.⁵⁸
23. Vietnam's third Periodic Report claimed, "In search for a more humane execution of death penalty, lethal injection has been implemented instead of shooting since 1 July 2011. The form and procedures for the execution of death penalty must be conducted in accordance with law."⁵⁹ It is extremely worrying that Vietnam maintains that the lethal injection

is – or indeed that any method could be – a “*humane*” way of killing, and that people are being killed in very large numbers in complete secrecy with unknown poisons.

24. Vietnam does not show any signs of moving away from executions or use of the lethal injection. In February 2017, the Ministry of Public Security announced that five more lethal injection venues would be built.⁶⁰

The argument that the death penalty has a deterrent effect is not supported by evidence

25. Vietnam rejected recommendations to abolish capital punishment at its 2009 Universal Periodic Review⁶¹, stating that capital punishment is an “*effective deterrence measure*” against “*complicated and dangerous crimes*” and that it therefore did not foresee the abolition of the death penalty in the near future.⁶²

26. There is a large body of evidence that the death penalty has no more of a deterrent effect than other sentences. A 2004 study of the results of 74 research projects carried out between 1952 and 2003 concluded that the death penalty does not have a greater deterrent effect than alternative penalties.⁶³ The same conclusion was reached by a 2017 study,⁶⁴ the foremost death penalty criminology expert,⁶⁵ constitutional courts,⁶⁶ UN Special Rapporteurs,⁶⁷ and almost all criminologists polled for a 2009 study.⁶⁸ Academics demonstrated that Singapore has not reduced its crime rate compared to Hong Kong,⁶⁹ the increase in likelihood of apprehension deters criminals more than a severe punishment,⁷⁰ and the availability of heroin in Malaysia increased despite the death penalty for drug offences.⁷¹

27. In January 2015, a Vietnamese news outlet published an article citing global scientific research which showed the deterrent effect of the death penalty has not been proved, with crime rates having no correlation with the application of the death penalty.⁷² A study by Vietnamese policing agencies showed that, despite the numbers of death sentences and executions, drug trafficking and drug-related arrests increased in 2016-17.⁷³

28. The HRC has held that “*arbitrariness*” in the context of deprivation of life under Article 6(1), encompasses elements of inappropriateness, injustice, lack of predictability and due process of law⁷⁴; that arbitrariness can involve an action or decision based on a random or convenient selection rather than reason⁷⁵; and that it includes elements of reasonableness and proportionality.⁷⁶ Consequently, executions in Vietnam for drug offences may be arbitrary under the ICCPR because the stated objective – deterrence – is based on assumptions that are not supported by evidence and because the death penalty is a disproportionate, irrational, and unfair means of achieving that objective.⁷⁷

Recommendations

The following recommendations are suggested for Vietnam’s third UPR:

- a. Vietnam should further review the Penal Code to ensure that the death penalty does not apply to offences which do not meet the threshold of “*most serious crimes*” under international law (including national security, economic, and drug-related offences) with a view to abolishing the death penalty.

- b. Vietnam should review its use of executions in the context of international norms and human rights standards and its obligations under international conventions with a view to adopting a moratorium on executions.
- c. Vietnam should remove the classification of death penalty information as state secrets and publish disaggregated information about the numbers of people on death row and executed in recent years, including the offence for which they were sentenced to death, their gender and age, and the date of each sentence and execution.
- d. Vietnam should publish detailed information about the type and amounts of chemicals used in lethal injections, to open the process to the scrutiny of medical professionals and the international community and establish whether executions by lethal injection have also amounted to torture, with a view to stopping the lethal injection.
- e. Vietnam should develop and implement robust and transparent safeguard mechanisms to ensure that death row prisoners who have mental illness and/or who have suffered torture or other mistreatment by the authorities and/or who experienced an unfair trial will never be executed. To that end, Vietnam should ensure that all persons sentenced to death are treated in line with domestic law and with international minimum standards.
- f. Working with independent and internationally recognised experts, Vietnam should undertake comprehensive and open reviews into both the efficacy and human rights implications of the death penalty for drug offences compared to alternative sentences and the purported deterrent effect of the death penalty, with a view to moving away from the death penalty towards more effective ways of controlling illegal drugs.

¹ Reduce the number of offences punishable by the death penalty (Germany C1 – supported); fulfil the Government aim of limiting the use of capital punishment promptly by reducing the scope of crimes subject to the death penalty (Norway C1 – supported)

² Revise its legislation on the death penalty bearing in mind existing international standards on the subject, especially concerning transparency (Switzerland C1 – supported)

³ Ratify the second Optional Protocol to ICCPR to abolish the death penalty. until this happens it commends the reduced number of crimes to which this penalty is applicable and hopes that this will be done in accordance with international standards and in full transparency (Argentina C1 – noted); review the list of crimes for which the death penalty is imposed, with a view to abolishing capital punishment (Brazil C1 – noted); impose a moratorium on executions immediately with the ultimate goal of abolishing the death penalty altogether (Finland C1 – noted); publish all information about the imposition and use of the death penalty, including information on executions carried out (Germany C1 – noted); take steps to abolish the death penalty and increase transparency around its use (New Zealand C1 – noted)

⁴ Continue to reduce offences subjected to the death penalty (Belgium C2 – supported); continue to work towards reducing the number of crimes subject to the death penalty (Namibia C2 – supported)

⁵ Consider at least further restricting the use of the death penalty only for the most serious crimes, as stated in article 6 of ICCPR with a view to soon adopting a de facto moratorium on executions (Italy C2 – supported); Reduce the list of crimes punishable by death penalty, in particular economic crimes and those linked to drugs, and examine the possibility of introducing a moratorium (Switzerland C2 – supported)

⁶ Continue reform towards eventual abolition of the death penalty, including greater transparency around its use (New Zealand C2 – supported)

⁷ Continue using its sovereign right to apply the death penalty as a tool of criminal justice in accordance with the proper safeguards specified under international human rights law (Egypt C2 – supported)

⁸ Opening remarks by H.E. Thanh T. Nguyen, Ambassador, Permanent Representative, Head of the Delegation, Viet Nam to the Adoption Session of the UPR Working Group Report on Vietnam, 26th Session of the Human Rights Council, 20 June 2014

⁹ Establish a moratorium on executions with a view to removing the death penalty from its criminal statutes and ratify the Second Optional Protocol to ICCPR (Australia C2 – noted); immediately adopt a moratorium on the death penalty as a first step towards its abolition (Austria C2 – noted); establish a moratorium on executions with a view to the total abolition of capital punishment (Belgium C2 – noted); institute a moratorium on the application of the death penalty (Togo C2 – noted); consider imposing a moratorium on execution of death penalties while assessing the possibility of adopting the Second Optional Protocol to ICCPR aimed at the abolition of the death penalty (Brazil C2 – noted); reintroduce a moratorium on executions with a view to abolition of the death penalty (Czechia C2 – noted); consider establishing a moratorium on the death penalty (Ecuador C2 – noted); establish a moratorium on the death penalty with a view to becoming a party to the second Optional Protocol to ICCPR, and continue with efforts to uphold all international human rights standards, including civil and political rights (Estonia C2 – noted); establish a moratorium on executions with a view to abolishing the death penalty (France C2 – noted); establish a moratorium on the use of the death penalty with a view to its abolition, and, in the meantime, ensure full compliance in all death penalty cases with international fair trial standards (Lithuania C2 – noted); establish an official moratorium on the use of the death penalty with a view to abolition (Montenegro C2 – noted); consider a moratorium on the use of the death penalty with a view to its abolition (Namibia C2 – noted); consider a moratorium on the death penalty with a view to its eventual abolition (Slovenia C2 – noted); adopt an indefinite moratorium on the death penalty and

commute current convictions to achieve its total abolition (Spain C2 – noted); declare a moratorium on the capital punishment, until that, promptly reduce the number of offences subject to death penalty and publish statistics about the use of death penalty in Viet Nam (Sweden C2 – noted); consider ratifying the Second Optional Protocol to ICCPR aiming at the abolition of the death penalty (Djibouti C2 – noted); ratify the Second Optional Protocol to ICCPR aiming at the abolition of the death penalty (Uruguay C2 – noted); ratify the Second Optional Protocol to ICCPR aiming at the abolition of the death penalty (Portugal C2 – noted); consider abolition of the death penalty in the near future (Greece C2 – noted); continue to work towards abolition of the death penalty and consider adopting an immediate de facto moratorium (Portugal C2 – noted); publish precise information on the identity and number of convicted persons currently on death row (Belgium C2 – noted); further reduce the number of crimes carrying the death penalty and publish figures on death verdicts (Germany C2 – noted); reduce the number of crimes punishable by death by December 2014 (UK C2 – noted)

¹⁰ Opening remarks by H.E. Thanh T. Nguyen, Ambassador, Permanent Representative, Head of the Delegation, Viet Nam to the Adoption Session of the UPR Working Group Report on Vietnam, 26th Session of the Human Rights Council, 20 June 2014

¹¹ Ministry of Foreign Affairs, Achievements in Protecting and Promoting Human Rights in Vietnam (2005)

¹² The Law Amending and Supplementing a Number of Articles of the Penal Code

¹³ Paragraph 10, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 to the Working group on the Universal Periodic Review 18th Session, A/HRC/WG.6/18/VNM/1

¹⁴ 2015 Penal Code (No. 100/2015/QH13)

¹⁵ Where (1) the sentenced person is 75 years or older or, (2) a person sentenced to death for embezzlement or taking bribes, after being sentenced, has returned at least 3 quarters of the embezzled property or bribes, closely cooperates with the authorities in the investigation or trial, or made reparation to atone for the crime.

¹⁶ Vietnam's Third Periodic Report to the Human Rights Committee, received 22 December 2017, CCPR/C/VNM/3 at paragraph 67

¹⁷ International Covenant on Civil and Political Rights, Treaty of the United Nations General Assembly (19 December 1966)

¹⁸ Article 6(2) of the ICCPR and Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Resolution of the Economic and Social Council of the United Nations (25 May 1984) Resolution 1984/50

¹⁹ The UN Secretary-General has expressed the view that “most serious crimes” are limited to, “intentional crimes with lethal or other extremely grave consequences” which means, “the offences should be life-threatening...” E/2000/3, para 79

²⁰ The Human Rights Council said that drug offences do not meet the Article 6(2) ICCPR threshold of “most serious crimes” and so should not be subject to the death penalty A/HRC/27/23 para 29

²¹ The UN Human Rights Commission passed a resolution calling on states that ratified the ICCPR to ensure “most serious crimes” doesn’t go beyond “intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts” (21 April 2004)

²² The view that the “most serious crimes” are limited to those “where it can be shown that there was an intention to kill which resulted in the loss of life” has been supported by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (29 January 2007) UN Doc No A/HRC/4/20, para. 65; the UN Special Rapporteur on torture (14 January 2009) UN Doc No A/HRC/10/44, para 66; and the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (6 August 2010) UN Doc No A/65/255, para 17.

²³ The UN Human Rights Committee concluded that drug-related offences are not amongst “the most serious” offences: Concluding Observations on the third periodic report of Sri Lanka (1995) UN Doc A/50/40, vol I, para. 449 (1995); Thailand (2005) UN Doc CCPR/CO/84/THA, para 14 (2005); Sudan (2007) UN Doc CCPR/C/SDN/CO/3, para 19 (2007); Egypt (28 November 2002) para. 12; India (30 July 1997) para. 20; Jordan (27 July 1994) s. 4; Libya (6 November 1998) para. 8; Philippines (1 December 2003) para. 10; Syria (24 April 2001) para. 8; Vietnam (26 July 2002) para. 7

²⁴ Interim report on the impact of the United Nations treaty bodies on the work of national courts and tribunals, in International Law Association, Report of the Seventieth Conference, New Delhi (2002) 507-555; Final report on the impact of the United Nations treaty bodies on the work of national courts and tribunals, in International Law Association, Report of the Seventy-First Conference, Berlin (2004) 621-687, www.ila-hq.org

²⁵ UNODC Executive Director (Commission on Narcotic Drugs), Drug control, crime prevention and criminal justice: A human rights perspective (3 March 2010) (E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1)

²⁶ Note by the Executive Director on drug control, crime prevention and criminal justice: A Human Rights Perspective, Report by the United Nations Office on Drugs and Crime (3 March 2010) UN Doc No E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1.

²⁷ INCB encourages States to consider the abolition of the death penalty for drug-related offences, Press release for the United Nations Information Service (5 March 2014) UN Doc No UNIS/NAR/1199. See also Naidoo, L (2015) ‘Item 17 (d): Narcotic drugs, Report of the International Narcotics Control Board’. Presented at the Economic and Social Council Coordination and Management Meetings in New York, USA, 15 July

²⁸ The Death Penalty in Vietnam – reported compiled by FIDH for the 6th World Congress Against the Death Penalty in Oslo, June 2016

²⁹ Thanhnein, Vietnam court upholds death sentences against 29 drug smugglers, 20th June 2014, <http://www.thanhniennews.com/society/vietnam-court-upholds-death-sentences-against-29-drug-smugglers-27474.html>; Telegraph, Vietnam sentences 30 heroin smugglers to death in biggest drugs trial, 20th January 2014, <http://www.telegraph.co.uk/news/worldnews/asia/vietnam/10584932/Vietnam-sentences-30-heroin-smugglers-to-death-in-biggest-drugs-trial.html>

³⁰ CHAPTER XIII (Offences Against National Security) includes a total of six crimes relating to national security punishable by death: high treason (Article 108), activities aimed at overthrowing the people’s administration (Article 109, formerly 79), espionage (Article 110, formerly 80), rebellion (Article 112), terrorist activities aimed at opposing the people’s administration (Article 113), and sabotaging facilities of the Socialist Republic of Vietnam (Article 114).

³¹ The Death Penalty in Vietnam, Report compiled for the 6th World Congress against the Death Penalty, Oslo 21st – 23rd June 2016, Vietnam Committee on Human Rights, p.3, https://www.fidh.org/IMG/pdf/2016_-_report_on_death_penalty_in_vietnam.pdf

³² New Developments in National Legislation on Human Rights and Updates on the Implementation of 2nd UPR Cycle Recommendations Accepted by Vietnam, dated 29 March 2017

³³ Decision No 01/2004/QĐ-TTg dated 5 January 2004 of the Prime Minister on the List of State Secret at Top Level in the People’s Court Sector Art 1(1)

³⁴ Hai Thanh Luong, ‘The Application of the Death Penalty for Drug-Related Crimes in Vietnam: Law, Policy, and Practice’ (2014) 17(1) Thailand Journal of Law and Policy

³⁵ Report in Thanh Nien on 24 September 2011

³⁶ Thanhnien, Is Vietnam ready to abolish death penalty?, 22nd January 2015, <http://www.thanhniennews.com/politics/is-vietnam-ready-to-abolish-death-penalty-37916.html>

³⁷ Figures published by the Minister of Public Security Tran Dai Quang, Thanh Nien, Vietnam minister wants to restore firing squad, 11th November 2013, <http://www.dailyvietnamnews.net/index/pages/20131109-vietnam-minister-wants-to-restore-firing-squad-for-executions.aspx>. Taken from Amnesty International, Death Sentences and Executions in 2013, 27th March 2014, p.18, <https://www.amnesty.org/en/documents/act50/001/2014/en/>

³⁸ <https://www.nytimes.com/2017/08/12/world/asia/vietnam-prison-abuses.html>

³⁹ In February 2017, the Supreme People’s Court announced that judgments would be published within 30 days on an online portal, subject to various legal restrictions and limitations which will severely restrict the information available. This took effect on 1 July 2017. See Amnesty International, Death Sentences and Executions 2017

⁴⁰ Report of the Ministry of Public Security No. 05/BC-BCA-C81, 4 January 2017

⁴¹ Death Sentences and Executions 2016, <https://www.amnestyusa.org/reports/death-sentences-executions-2016/>

⁴² Vietnam Law on Execution of Criminal Judgments, art. 59(1), Law No. 53/2010/QH12, Jun. 17, 2010.

⁴³ <http://www.sowetanlive.co.za/news/article10330540.ace>

- ⁴⁴ Decree on Execution by Lethal Injection, Decree No. 82/2011/ND-CP of September 16, 2011, article 6(1), http://www.moj.gov.vn/vbpa/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10717
- ⁴⁵ Council Regulation (EC) No 1236/2005 of 27 June 2005
- ⁴⁶ <http://www.wsj.com/news/articles/SB10001424127887323971204578627580713971870> and <https://www.theguardian.com/world/2013/nov/08/vietnam-firing-squad-executions>
- ⁴⁷ Decree No 47/2013/ND-CP dated 13 May 2013 of the Government Amending and Supplementing a Number of Articles of Decree No 82/2011/ND-CP dated 16 September 2011 of the Government on AP Execution by Lethal Injection
- ⁴⁸ Tuoi Tre News, Justice Ministry propounds reduction of death penalty, 10th April 2014, <http://tuoitrenews.vn/society/18932/justice-ministry-proposes-reduction-of-death-penalty>. BBC News, Vietnam to produce own poison for executions, 23rd January 2013, www.bbc.co.uk/news/world-asia-21163508
- ⁴⁹ Vietnam plans to produce its own lethal injection drugs, Thanh Nien News, 23 January 2013: <http://www.thanhniennews.com/index/pages/20130123-vietnam-considers-using-home-made-poisons-for-death-penalties.aspx>
- ⁵⁰ 117 inmates to be executed with lethal injections made in Vietnam, Thanh Nien News, 19 June 2013, <http://www.thanhniennews.com/index/pages/20130618-vietnam-death-row-inmates-to-get-home-made-lethal-injections.aspx>
- ⁵¹ Vietnam to produce poison for lethal injection, <http://english.vietnamnet.vn/fms/government/57673/vietnam-to-produce-poison-for-lethal-injection.html>
- ⁵² Letter from the Presidents of the British (BMA), Danish (DMA), and German (BÄK) Medical Associations to Vietnam Health Minister, 12th July 2013, <http://reprieve.webfactional.com/publiceducation/executiondrugstimeline/>
- ⁵³ AMA Code of Medical Ethics: <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page>
- ⁵⁴ Research carried out by Stanford University found that 7.1% of all lethal injections in the USA were botched, making it the most unreliable method of execution of all methods used since 1900. Professor Austin Sarat, *“Gruesome Spectacles: Botched Executions and America’s Death Penalty”*, Stanford University Press 2014, ISBN 9780804799454
- ⁵⁵ In 2009, the US state of Ohio was forced to abandon the execution of Romell Broom after executioners spent two hours trying to find a usable vein following 18 attempts to insert needles. Associated Press, *“Ohio inmate who became second death row prisoner in US history to survive execution fights a repeat attempt to kill him”*, Daily Mail, 23rd August 2016 <http://www.dailymail.co.uk/news/article-3754040/Ohio-inmate-survived-09-execution-appeals-high-court.html>
- ⁵⁶ In 2014, the US state of Oklahoma botched the execution of Clayton Lockett so badly that officials made the decision to abort the entire process. A review into the execution found that the IV lines were improperly inserted, meaning that the drugs failed properly to enter Mr Lockett’s bloodstream and take effect. Mr Lockett’s execution went so wrong that the governor’s office was forced to order the process be called off. Mr Lockett ultimately died of a heart attack. Jeffrey E. Stern, *“The Cruel and Unusual Execution of Clayton Lockett”*, The Atlantic, June 2015 <http://www.theatlantic.com/magazine/archive/2015/06/execution-clayton-lockett/392069/>
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- ⁶⁵ Chapter 1, available at <http://www.cambridge.org/catalogue/catalogue.asp?isbn=978051189074&ss=exc> (quoting Roger Hood, ‘Capital Punishment, Deterrence and Crime Rates,’ *Seminar on the Abolition of the Death Penalty, Kyiv [Ukraine]*, 28-29 September 1996: Council of Europe Parliamentary Assembly; Doc As / Jur [1996] 70, p.6, paras 23 and 27
- ⁶⁶ For example, the Constitutional Court of Belarus, 11 March 2004, Minsk No. J-171/2004, and the South African Constitutional Court in *S v Makwanyane* 67 A/67/275 at para 60
- ⁶⁷ Michael L. Radelet, PhD, Sociology Professor and Department Chair at the University of Colorado-Boulder, ‘Do Executions Lower Homicide Rates?: The Views of Leading Criminologists’ in the *Journal of Criminal Law and Criminology* (2009)
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- ⁷⁴ Human Rights Committee in *Kindler v Canada* (No. 470/1991) UN Doc. A/48/40 Vol. II, p.138, UN Doc CCPR/C/45/D/470/1991, 14 HRLJ 307, 6 RUDH 165; similar to Inter-American Commission on Human Rights in *Baptiste v Grenada* para 84; *Lamey et al v Jamaica* para 129
- ⁷⁵ The Human Rights Committee in its draft General Comment No. 36 on Article 6 ICCPR http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf
- ⁷⁷ Drug Offences, the Death Penalty, and Indonesia’s Human Rights Obligations in the Case of the Bali 9: Opinion Submitted to the Constitutional Court of the Republic of Indonesia – Andrew Byrnes https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997178