

RATIFYING THE 2ND OPTIONAL PROTOCOL TO THE ICCPR ON THE ABOLITION OF THE DEATH PENALTY

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EU JULE
TOWARDS A LEGAL
AND JUSTICE SYSTEM
FOR ALL

WHAT IS THE DEATH PENALTY?

The death penalty is a punishment that deprives a person of their life when that person has been convicted – by a legally established court as regulated by a legal system – of having committed a serious crime. International human rights law allows for the death penalty when applied for the most serious crimes, which experts define as crimes of extreme gravity, involving intentional killing. Consequently, the death penalty should not be used as a punishment for crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, drug and sexual offences.



WHAT IS THE SITUATION IN VIET NAM?

Viet Nam has not yet abolished the death penalty, but has been considering whether to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2) aiming at the abolition of the death penalty. Over time, the number of crimes for which the death penalty is retained as a punishment has reduced from 44 crimes in 1997 to 18 in 2017. The crimes now include drug-related and corruption-related offences, crimes infringing upon national security, human life or health, economic management and public safety, and offences related to sabotaging peace, crimes against humanity and war crimes. Certain persons cannot be subjected to the death penalty in Viet Nam, including persons committing crimes under 18 or over 75 years of age, and women during pregnancy or raising a child under 36 months old.



KEY FINDINGS

Countries increasingly acknowledge that the implementation of the death penalty is incompatible with the protection of the right to life and, by 2018, only 56 still retained and applied this form of punishment. There are many reasons that countries have stopped using capital punishment. Most importantly, the death penalty is considered as infringing the right to life. Secondly, there is no evidence that the death penalty is an effective measure for crime prevention and deterrence. Studies show that there is no proof that it is more effective than, for example life imprisonment; the crime rate in countries that use the death penalty are not lower than in countries that do not. Moreover, life imprisonment is just as effective at preventing individuals who are considered a threat to society from reoffending. Another important point is that the death penalty is an irreversible punishment. In addition, enforcement of the death penalty can also cost up to 18 times more than life imprisonment. Finally, evidence suggests using the death penalty to punish offenders 'as retribution' for victims and their families does not necessarily make those victims and families feel that they are being compensated.

In some countries, steps towards abolition have been initiated and motivated by social movements or civic initiatives. In many cases, the process relies on the support of national leaders, while in others, reforms are driven by international advocacy and pressure. The journey towards abolition can involve periods where progress is temporarily reversed or moratoriums are broken, and it may be necessary to demonstrate to citizens and leaders that abolition does not lead to an increase in crime rates. Ratifying the Second Optional Protocol (OP2) to the International Covenant on Civil and Political Rights can be a step towards ending the use of the death penalty, since it demonstrates a country's commitment to abolishing capital punishment. As of April 2020, the OP2 had been ratified by 88 countries, which means that those States are obliged to take all necessary measures to abolish the death penalty within their jurisdiction, both in law and in practice. To take this step, a country does not have to have already fully harmonized its laws with OP2.



In Viet Nam, there seems to be general support for gradually limiting the scope of the death penalty, with a view to moving towards abolition of capital punishment and creating favourable conditions for Viet Nam to accede to OP2. The Politburo has affirmed the desirability of “limiting the imposition of the death penalty in the way that the death penalty shall apply only to a certain number of extremely serious crimes.”

Key recommendations for Viet Nam from the Universal Periodic Review (UPR) of the Human Rights Council concern the ratification of OP2, aiming at the abolition of the death penalty. Even though in recent years Viet Nam has only applied the death penalty for three kinds of crimes, in order to ratify OP2, Viet Nam would have to impose a moratorium on the execution of such sentences. It seems that there is not yet sufficient support for a moratorium, due to perceptions that the crime situation in the country has become complex, that there has been a perceived increase in the nature, seriousness and scale of crimes, and that the death penalty is considered an effective deterrent of crime.



RECOMMENDATIONS

- (1) Viet Nam should continue its efforts to **limit the scope and application of the death penalty**, with a view to meeting the necessary conditions to **accede to the Second Optional Protocol to the ICCPR at an appropriate time**.
- (2) **Continue studying and disseminating relevant international experiences** on the abolition of death penalty, from countries with similar economic, social condition, including, memorandum models etc. to provide comprehensive information for competent agencies to develop national policy on death penalty
- (3) **Raise awareness among public and government officials of arguments for a moratorium** on the executions and abolition of the death penalty; strengthen public campaigns and other outreach activities to improve awareness of the death penalty
- (4) **Continue to reduce the number of offences** for which the death penalty may be imposed, expand the list of sentenced persons who are not subject to the application, execution and memorandum of the death penalty, by amending the Penal Code, the Law on Execution of Temporary Custody and Detention, the Law on Enforcement of Criminal Judgements, the Criminal Procedure Code and any other relevant legal documents. In this regard, Viet Nam should **review the concept of “most serious crimes”** to ensure the conformity with the scope of “most serious crimes” under international human rights law and Article 6 of the ICCPR
- (5) **Consider imposing a moratorium on executions** as a significant preparatory step towards the eventual and total abolition of the death penalty
- (6) **Conduct further studies on alternative sanctions**, on the basis of Vietnam’s practices and international experience to provide relevant recommendations while ensuring humanity in Vietnam’s criminal policy, and the requirements to fight against crime



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