



The Socialist Republic of Vietnam's Compliance with the Convention on the Rights of the Child

Alternative Report on the Rights of Children Whose Parents are Sentenced to Death or Executed

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. This report highlights issues regarding the rights of children of parents who are sentenced to death or executed in the Socialist Republic of Vietnam. The report also proposes a number of suggested recommendations for the Committee on the Rights of the Child to offer to the Government of Vietnam.

Background on the Death Penalty in Vietnam

2. In 2015, the Vietnam Penal Code was revised to limit capital punishment to 18 offenses.¹ The offenses include murder, drug trafficking, manufacturing fake medicines, as well as various economic crimes, such as receiving bribes and embezzling property. Political acts perceived as “threats against national security” also carry the death penalty as a maximum sentence.²
3. In 2011, Vietnam replaced execution by firing squad with lethal injection.³ The identity of the drugs used for executions in Vietnam is not available. Due to an export ban from the European Union,⁴ Vietnam has turned to domestically manufactured drugs for its lethal injections.⁵
4. The death penalty cannot be applied to people age 75 or older, juvenile offenders, pregnant women, or women nursing children under 36 months of age at the time the crime was committed or at the time of trial.⁶
5. Statistics on the number of death sentences and executions are classified as “state secrets.”⁷ International and national media report an average of 100 death sentences per year.⁸ At least 148 people were sentenced to death in 2013.⁹ In February 2017, the Ministry of Public Security (the national police force) for the first time released a report disclosing some information about the death penalty. The report stated that between 2011-2016, Vietnam was holding 1,134

¹ Vietnam Criminal Code, Law No. 100/2015/QH13, Nov. 27, 2015, art. 108, 109, 110, 112, 113, 114, 123, 142, 194, 248, 250, 251, 299, 353, 354, 421, 422, 423; Vietnam Committee on Human Rights, *The Death Penalty in Vietnam: Report compiled for the 6th World Congress against the Death Penalty* (Oslo: 2016), 3.

² Vietnam Criminal Code, Law No. 100/2015/QH13, Nov. 27, 2015, Chapter XIII (Offences against National Security); Vietnam Committee on Human Rights, *The Death Penalty in Vietnam: Report compiled for the 6th World Congress against the Death Penalty* (Oslo: 2016), 3.

³ Vietnam Law on Execution of Criminal Judgments, Law No. 53/2010/QH12, Jun. 17, 2010, art. 59(1).

⁴ Amnesty International, *Death Sentences and Executions 2011*, ACT 50/001/2012, (London, UK: Amnesty International Publications, 2012), 28.

⁵ *Justice Ministry propounds reduction of death penalty*, Tuoi Tre News, Apr. 10, 2014, <https://tuoitrenews.vn/news/society/20140410/justice-ministry-propounds-reduction-of-death-penalty/26863.html>; *Vietnam to produce own poison for executions*, BBC News, Jan. 23, 2013, www.bbc.co.uk/news/world-asia-21163508

⁶ Vietnam Criminal Code, Law No. 100/2015/QH13, Nov. 27, 2015, art. 40.

⁷ Vietnam Committee on Human Rights, *The Death Penalty in Vietnam: Report compiled for the 6th World Congress against the Death Penalty* (Oslo: 2016), 3–4; Amnesty International, *Socialist Republic of Vietnam Duong Quang Tri: Sentenced to death for fraud*, ASA 41/004/2006, (May 1, 2006); The International Federation for Human Rights, Vietnam Committee on Human Rights, & Action for Democracy in Vietnam, *The Death Penalty in the Socialist Republic of Vietnam: Special edition for the 4th World Congress against the Death Penalty* (2010), 4.

⁸ Press Release, The International Federation for Human Rights & Vietnam Committee on Human Rights, Vietnam: Progress urged towards abolishing the death penalty (Oct. 10, 2014). Also available online at <https://www.fidh.org/en/region/asia/vietnam/16215-vietnam-progress-urged-towards-abolishing-the-death-penalty>.

⁹ Vietnam Committee on Human Rights, *The Death Penalty in Vietnam: Report compiled for the 6th World Congress against the Death Penalty* (Oslo: 2016), 4.

people on death row and that from 2013-2016,¹⁰ 429 people were executed by lethal injection.¹¹ At least 600 people were on death row at the end of 2018 and 85 were executed.¹² In 2021, this number increased to over 1200 individuals on death row.¹³ There was also a 30% increase in reported death sentences between October 2020 and August 2021, with 119 recorded in 2021.¹⁴

Vietnam fails to uphold its obligations under the Convention on the Rights of the Child.

6. Vietnam ratified the Convention on February 28, 1990.¹⁵ Nonetheless, Vietnam continues to sentence people to death even though doing so violates the rights of children of people sentenced to death. According to a 2019 report published by Quaker United Nations Office, death sentences imposed upon and executions of a parent can violate a child's right to health, information, and protection from discrimination.¹⁶ Moreover, the trauma a child of an incarcerated or executed parent experiences can rise to the level of torture,¹⁷ and can compromise a child's right to an adequate standard of living.¹⁸
7. This report focuses on a number of related issues that affect the children of parents sentenced to death or executed in Vietnam: a child's right to information (Article 9); a child's right not to be separated from parents who are sentenced to death or executed (Article 9); a child's right to health and safety (Articles 3, 6, 24); and a child's right to freedom from torture and other ill-treatment (Article 37).

I. The lack of transparency in judicial and penal proceedings violates the rights of children to information (List of Issues para. 6).

8. In its 2020 List of Issues, the Committee asked Vietnam to provide information on how Vietnam's recent legislation ensures children's general "access to appropriate information."¹⁹
9. Vietnam does not publish information regarding its detention centers, prisons, prison population, or inmates sentenced to death, nor is there an independent monitor of such

¹⁰ David Hutt, *Beware Vietnam's Death Machine: A closer look at capital punishment in the Southeast Asian state*, The Diplomat, Apr. 20, 2017, <http://thediplomat.com/2017/04/beware-vietnams-death-machine/>.

¹¹ *Vietnam to build five more lethal injection venues*, Vietnam Net, Feb. 10, 2017,

<http://english.vietnamnet.vn/fms/society/172369/vietnm-to-build-five-more-lethal-injection-venues.html>.

¹² Amnesty International, *Death Sentences and Executions in 2018*, ACT 50/9870/2019 (London: Amnesty International Publishing, 2019), 19.

¹³ Amnesty International, *Death Sentences and Executions in 2021*, ACT 50/5418/2022 (London: Amnesty International, 2022), 13.

¹⁴ Amnesty International, *Death Sentences and Executions in 2021*, ACT 50/5418/2022 (London: Amnesty International, 2022), 12.

¹⁵ United Nations Treaty Collection, "Convention on the Rights of the Child," accessed Aug. 1, 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&clang=_en.

¹⁶ Quaker United Nations Office, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Geneva: 2019), 5.

¹⁷ Quaker United Nations Office, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Geneva: 2019), 6.

¹⁸ United Nations Covenant on the Rights of the Child, 1989, Art. 27.

¹⁹ Committee on the Rights of the Child, *List of issues in relation to the combined fifth and sixth report of Viet Nam*, (Nov. 17, 2020) U.N. Doc. CRC/C/VNM/Q/5-6, ¶ 6(a).

conditions and statistics.²⁰ The Ministry of Public Security does not allow international monitors to have access to prisons.²¹

10. It is unclear whether courts and prison officials provide children with adequate information regarding their parent's court dates or execution date. The trauma children undergo when denied this right to be appropriately informed of the date, time, and location of their parent's pending execution can constitute ill-treatment or torture.²² It is unclear whether courts in Vietnam maintain standardized procedures to notify children of a parent's execution.
11. There is no apparent distinction between acts of terrorism and peaceful expression. Critics of the government or of the ruling political party faced increased arbitrary arrests and prosecutions in 2021.²³ Vague provisions in the criminal code characterized as propaganda laws have been used to charge human rights defenders, a practice the UN has criticized.²⁴ Application of the death penalty for vague political offenses violates international human rights standards and contradicts Vietnam's own justifications for such the death penalty.²⁵

12. Suggested recommendations:

- Ensure that a child whose parent has been sentenced to death has timely and complete access to information about the parent's sentence and when it will be carried out, unless an independent authority determines, in consultation with the child if possible, that such information is not in the best interests of the child.
- Regularly publish disaggregated data about people sentenced to death and people executed, including whether they had any minor children at the time of the offense, while in detention, or when they were executed.

II. Sentencing a parent to death may violate a child's right to freedom from torture and other ill-treatment (List of Issues, para. 7).

13. In its 2020 List of Issues, the Committee requested information on measures taken to "ensure prompt and effective investigation of all alleged cases of torture or ill-treatment of children."²⁶

²⁰ Committee on the Rights of the Child, *Concluding observations on the third periodic report of Viet Nam* (Aug. 29, 2019), U.N. Doc. CCPR/C/VNM/CO/3, ¶ 6.

²¹ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 6.

²² Children Rights Connect & Working Group on Children of Incarcerated Parents, *Children of parents sentenced to death or executed: How are they affected? How can they be supported?* (Aug. 2013), 3, 8.

²³ Amnesty International, *Amnesty International Report 2021/2022: The State of the World's Human Rights*, POL 10/4870/2022, (London: Amnesty International Publishing, 2022), 404; Human Rights Watch, *World Report 2022: Events of 2021*, (New York: Human Rights Watch, 2022), 743.

²⁴ Press Release, United Nations Human Rights Office of the High Commissioner, Viet Nam: UN experts appalled by the conviction of four human rights defenders (Dec. 23, 2021). Also available online at <https://www.ohchr.org/en/press-releases/2021/12/viet-nam-un-experts-appalled-conviction-four-human-rights-defenders>

²⁵ Human Rights Council: Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 Aug. 2019* (Sep. 10, 2019), U.N. Doc. A/HRC/WGAD/2019/44, ¶ 24.

²⁶ Committee on the Rights of the Child, *List of issues in relation to the combined fifth and sixth report of Viet Nam*, (Nov. 17, 2020) U.N. Doc. CRC/C/VNM/Q/5-6, ¶ 7(a).

14. In its 2020 State Party Report, Vietnam reiterated its commitment to preventing torture and other cruel, inhuman, or degrading treatment or punishment of children.²⁷ Vietnam stated that its implementation of the Child Protection Program 2011–2020 aimed to protect children from falling into ‘special circumstances’ that compound the risk of harm and ill-treatment and provide support in recovery from such harm.²⁸
15. The severe emotional distress that a child may face when a parent is sentenced to death or executed may be recognized as a violation of Article 37. Beyond physical pain, the mental anguish, trauma, and suffering a child may face is cruel, and constitutes ill-treatment that may rise to the level of torture.²⁹ It is not clear whether Vietnam has any policies to protect children from ill-treatment or torture that may result from a parent’s death sentence.
16. More broadly, criminal legislation in Vietnam does not explicitly criminalize torture.³⁰
17. Although information is scant, there are reports of inhuman living conditions on death row. Prisons are overcrowded, unsanitary, and excessively hot during the summer months.³¹ People in detention do not have access to sufficient food and potable water,³² and medical care is available only to those who can afford it, even though many are in need of care due to ill-treatment in detention. Conditions are especially harsh for people sentenced for committing political offenses; these people are shackled and placed in solitary confinement.³³ Torture and abuse is also commonly reported.³⁴ People on death row are called “living ghosts” and their cells are narrower than cells of the rest of the prison population, with poor ventilation, physical abuse, and inadequate food and drink.³⁵ Knowing that a parent is living in such harsh conditions on death row compounds the emotional trauma that children face.

18. Suggested recommendations:

- Provide comprehensive support to children of people sentenced to death, to promote their physical and psychological recovery and social reintegration in an environment that fosters the health, self-respect, and dignity of the child, consistent with Article 37.

²⁷ Committee on the Rights of the Child, *Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention, due in 2017*, (Mar. 3, 2020), U.N. Doc CRC/C/VNM/5-6, ¶ 68.

²⁸ Committee on the Rights of the Child, *Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention, due in 2017*, (Mar. 3, 2020), U.N. Doc CRC/C/VNM/5-6, ¶ 69.

²⁹ Quaker United Nations Office, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Geneva: 2019), 16.

³⁰ Committee on the Rights of the Child, *Concluding observations on the third periodic report of Viet Nam*, (Aug. 29, 2019), U.N. Doc. CCPR/C/VNM/CO/3, ¶ 6.

³¹ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 4.

³² United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 4.

³³ Amnesty International, *Amnesty International Report 2021/2022: The State of the World’s Human Rights*, POL 10/4870/2022, (London: Amnesty International Publishing, 2022), 405; Amnesty International, “Việt Nam: Activist Tortured, Held in Solitary Confinement for Over 300 days,” ASA 41/3878/2021, Mar. 23, 2021, <https://www.amnesty.org/en/documents/asa41/3878/2021/en/>

³⁴ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 3.

³⁵ Quaker United Nations Office, *Children of Parents Sentenced to Death*, by Helen F. Kearney (Geneva, New York: 2012), 16.

- Ensure that conditions of detention for people on death row are in line with international standards, particularly the Nelson Mandela Rules, and ensure that such people are treated humanely and with dignity, and that their children are assured that their parents are not being subjected to torture or other ill-treatment.

III. Vietnam’s use of the death penalty violates the right of children to not be separated from parents who are sentenced to death or executed (List of Issues para. 8).

19. In the 2020 List of Issues, the Committee asked Vietnam to describe the measures it has taken to address the root causes of children being deprived of a family environment.³⁶
20. In its State Party Report, Vietnam stated that the separation of parents from children in cases where the parents are in custody or serving prison sentences is an exception to the 2016 Law on Children, which provides that “children have the right to live with their parents.”³⁷ Vietnam elaborated that in cases where children are separated from parents, such as when parents are serving prison sentences, there should be assistance for children to remain in communication with their parents. There is an exception to this assistance if the communication is not in the best interests of the child.³⁸
21. Children have a right not to be separated from their parents. Given the gravity of the effect on the child, such a separation should not occur unless it is done in order to protect the child and to further what is in the child’s best interests.³⁹ Further, when children are deprived of one of their parents or orphaned as a result of the death penalty, such children experience a permanent deprivation of the complete family environment. “A less intrusive means of separating a child from a parent than killing the parent, imprisonment or, where possible, alternatives to detention, avoid the finality of an execution with its permanent removal of the parent from the child’s life.”⁴⁰
22. The only evidence of Vietnam’s compliance with a child’s right to non-separation is Vietnam Penal Code Article 40.⁴¹ Capital punishment does not apply to pregnant women and women nursing children under 36 months old at the time of committing crimes or at the time of trial.⁴² Such provisions provide incomplete protections for children who do not fall within the exceptions.
23. Authorities may deny family visits when a suspect is detained during interrogation. Denial of family visits is particularly comment when people are arrested on charges involving a politically motivated crime or when authorities assert that the case involves issues of national

³⁶ Committee on the Rights of the Child, *List of issues in relation to the combined fifth and sixth report of Viet Nam*, (Nov. 17, 2020) U.N. Doc. CRC/C/VNM/Q/5-6, ¶ 8(a).

³⁷ Committee on the Rights of the Child, *Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention, due in 2017*, (Mar. 3, 2020), U.N. Doc CRC/C/VNM/5-6, ¶ 83, 84.

³⁸ Committee on the Rights of the Child, *Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention, due in 2017*, (Mar. 3, 2020), U.N. Doc CRC/C/VNM/5-6, ¶ 83.

³⁹ Quaker United Nations Office, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Geneva: 2019), 28.

⁴⁰ Quaker United Nations Office, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Geneva: 2019), 28.

⁴¹ Vietnam Criminal Code, Law No. 100/2015/QH13, Nov. 27, 2015, art. 40.

⁴² Kien Tran & Cong Giao Vu, 9 *The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry*, Society, 14 (2019).

security.⁴³ Police also hold incommunicado people suspected of politically motivated crimes and defendants in national security cases, in violation of their right to contact family regarding their arrest.⁴⁴

24. Family members have the right under Vietnamese law to visit one to three hours per month and to communicate with family members in detention by telephone for ten minutes four times per month.⁴⁵ According to reports, however, these opportunities for contact are much more limited.⁴⁶ The phone calls are also monitored and censored, and are reportedly cut off abruptly when a party mentions negative detention conditions.⁴⁷ Prison authorities often hold or transfer people in detention to facilities far from their homes without informing family members, increasing the difficulty of family visits.⁴⁸ Many family visits were cancelled in 2021 due to COVID-19 mitigation efforts, but prison authorities refused to grant families requests for longer and additional phone contact to compensate for the lack of visits.⁴⁹

25. Suggested recommendations:

- Place a moratorium on the use of the death penalty with a view to the complete abolition of the death penalty and commute the sentences of all persons under sentence of death to a sentence that is fair, proportionate, and consistent with international human rights standards.
- Ensure that children of people under sentence of death have adequate opportunities to visit and communicate with their parents who are held in detention if such visits and communications are in their best interests.
- Establish an independent monitoring mechanism to ensure children communicating with their parents while they are in detention enjoy their right to privacy.

IV. Vietnam's use of the death penalty violates the right to health and safety of children of parents sentenced to death or executed (Articles 3, 6, 24).

26. In its 2020 State Party Report, Vietnam pointed to the 2016 Law on Children and its Penal Code as capturing the principle of ensuring the best interests of children, including throughout criminal proceedings.⁵⁰ Vietnam stated that it prioritizes promoting rights to life and

⁴³ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 8.

⁴⁴ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 9.

⁴⁵ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 6.

⁴⁶ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 6.

⁴⁷ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 6.

⁴⁸ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 14.

⁴⁹ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Vietnam 2021 Human Rights Report*, (2021), 6.

⁵⁰ Committee on the Rights of the Child, *Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention, due in 2017*, (Mar. 3, 2020), U.N. Doc CRC/C/VNM/5-6, ¶ 26.

development of children in its 2013 Constitution and in the 2016 Law on Children.⁵¹ Vietnam also pointed to measures of improving health services for children, including ensuring children in special circumstances receive free health insurance cards under its Law on Health Insurance.⁵²

27. When a child abruptly loses a parent as a result of the death penalty, the child can experience severe emotional trauma.⁵³ Studies show that this trauma often leads to mental and physical health problems through the rest of the child's life.⁵⁴ The effects threaten the child's material, physical, educational, and mental health well-being.⁵⁵ In addition, children of parents in prison and of executed parents often experience discrimination and shame as a result of the parent's conviction and sentencing. This discrimination can lead to additional emotional trauma and related violence can threaten the child's physical health.⁵⁶

28. Children who lose their parent to the death penalty may also be orphaned or become homeless.

29. Suggested recommendations:

- Put policies in place to ensure that ongoing emotional, physical, and educational support is made available to all children of parents who are sentenced to death and all children of parents who have been executed.
- Implement training for professionals in the health care system to ensure that the system is equipped to provide the treatment that children with parents who have been sentenced to death need to thrive.
- Implement training for professionals in the education system to ensure that all schools are equipped to provide for the educational needs of children of parents who are sentenced to death or executed.
- Ensure that all children are properly cared for by their families or by an adoptive family after a parent has been sentenced to death.

⁵¹ Committee on the Rights of the Child, *Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention, due in 2017*, (Mar. 3, 2020), U.N. Doc CRC/C/VNM/5-6, ¶ 34.

⁵² Committee on the Rights of the Child, *Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention, due in 2017*, (Mar. 3, 2020), U.N. Doc CRC/C/VNM/5-6 ¶¶ 110–112.

⁵³ Quaker United Nations Office, *Children of Parents Sentenced to Death*, by Helen F. Kearney (Geneva, New York: 2012), 12.

⁵⁴ Quaker United Nations Office, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farior (Geneva: 2019), 15.

⁵⁵ Quaker United Nations Office, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farior (Geneva: 2019), 15.

⁵⁶ Quaker United Nations Office, *Children of Parents Sentenced to Death*, by Helen F. Kearney (Geneva, New York: 2012), 10.