



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

### **Suggesting List of Issues Relating to 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  
and

**The World Coalition Against the Death Penalty**

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental 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 questions 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.<sup>1</sup> 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.<sup>2</sup>
3. In 2011, Vietnam replaced execution by firing squad with lethal injection.<sup>3</sup> The identity of the drugs used for executions in Vietnam is not available. Due to an export ban from the European Union,<sup>4</sup> Vietnam has turned to domestically manufactured drugs for its lethal injections.<sup>5</sup>
4. The death penalty cannot be applied to people age 75 or older, juvenile offenders, pregnant women, or women nursing children under 36 months old at the time the crime was committed or being tried.<sup>6</sup>
5. Statistics on the number of death sentences and executions are classified as “state secrets.”<sup>7</sup> International and national media report an average of 100 death sentences per year.<sup>8</sup> At least 148 people were sentenced to death in 2013.<sup>9</sup> 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

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<sup>1</sup> Viet. Penal Code, art. 108, 109, 110, 112, 113, 114, 123, 142, 194, 248, 250, 251, 299, 353, 354, 421, 422, 423, Law No. 100/2015/QH13, Nov. 27, 2015, as amended through to Jun. 20, 2017. Vietnam Comm. on Human Rights, “The Death Penalty in Vietnam,” Report compiled for the 6th World Congress against the Death Penalty, p. 3, Oslo, June 21-23, 2016.

<sup>2</sup> Viet. Penal Code, Ch. XIII (Offences against National Security), Law No. 100/2015/QH13, Nov. 27, 2015, as amended through to Jun. 20, 2017. Vietnam Comm. on Human Rights, “The Death Penalty in Vietnam,” Report compiled for the 6th World Congress against the Death Penalty, p.3, Oslo, June 21-23, 2016.

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

<sup>4</sup> Amnesty Intl., Death Sentences and Executions 2011, ACT 50/001/2012, p. 28, Mar. 27, 2012.

<sup>5</sup> Tuoi Tre News, Justice Ministry propounds reduction of death penalty, <http://tuoitrenews.vn/society/18932/justice-ministry-proposes-reduction-of-death-penalty>, Apr. 10, 2014; BBC News, Vietnam to produce own poison for executions, [www.bbc.co.uk/news/world-asia-21163508](http://www.bbc.co.uk/news/world-asia-21163508), Jan.23, 2013.

<sup>6</sup> Viet. Penal Code, art. 40, Law No. 15/1999/QH10, Dec. 21, 1999, as amended through to Jun. 19, 2009.

<sup>7</sup> Vietnam Comm. on Human Rights, “The Death Penalty in Vietnam,” Report compiled for the 6th World Congress against the Death Penalty, Oslo, June 21-23, 2016; Amnesty Intl., Socialist Republic of Vietnam Duong Quang Tri: Sentenced to death for fraud, p. 3, ASA 41/004/2006, May 1, 2006; Intl. Federation for Human Rights & Vietnam Committee on Human Rights, The Death Penalty in the Socialist Republic of Vietnam, p. 4, Feb. 23, 2010.

<sup>8</sup> FIDH-VCHR, Press release 14 October 2014, [http://www.queme.net/eng/news\\_detail.php?numb=2360](http://www.queme.net/eng/news_detail.php?numb=2360).

<sup>9</sup> Vietnam Comm. on Human Rights, “The Death Penalty in Vietnam,” Report compiled for the 6th World Congress against the Death Penalty, Oslo, June 21-23, 2016.

was holding 1,134 people on death row and that from 2013-2016,<sup>10</sup> 429 people were executed by lethal injection.<sup>11</sup> At least 600 people were on death row at the end of 2018. According to Amnesty International, during 2018 there were 85 executions and 122 new death sentences.<sup>12</sup>

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

6. Vietnam ratified the Convention on Rights of the Child (CRC) on February 28, 1990.<sup>13</sup> 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 (QUNO), death sentences or executions of a parent can violate a child's right to health, information, and protection from discrimination.<sup>14</sup> Moreover, the trauma experienced by a child of an incarcerated or executed parent can rise to the level of torture,<sup>15</sup> and can compromise a child's right to an adequate standard of living.<sup>16</sup>
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 (Article 9).**

8. 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 conditions and statistics.<sup>17</sup>
9. 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.<sup>18</sup> It is unclear whether

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<sup>10</sup> Hutt, David (April 20, 2017). "Beware Vietnam's Death Machine" (<https://web.archive.or/web/20170421012041/http://thediplomat.com/2017/04/beware-vietnams-death-machine/>) The Diplomat. Archived from the original (<http://thediplomat.com/2017/04/beware-vietnams-death-machine/>) on April 21, 2017.

<sup>11</sup> Vietnam Net, Vietnam to build five more lethal injection venues, <http://english.vietnamnet.vn/fms/society/172369/vietnm-to-build-five-more-lethal-injection-venues.html>, Feb. 10, 2017.

<sup>12</sup> Amnesty Int'l, Death Sentences and Executions in 2018, p.19, ACT 50/9870/2019, Apr. 10, 2019.

<sup>13</sup> United Nations, "United Nations Treaty Collection - Convention on the Rights of the Child," accessed February 23, 2020, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en).

<sup>14</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (Feb. 2019), 5.

<sup>15</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (Feb. 2019), 6.

<sup>16</sup> United Nations Covenant on the Rights of the Child, 1989, Art. 27.

<sup>17</sup> Comm. on the Rights of the Child, Concluding observations on the third periodic report of Viet Nam, U.N. Doc. CCPR/C/VNM/CO/3 at 6 (Aug. 29, 2019).

<sup>18</sup> Children Rights Connect and 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), at 3, 8.

courts in Vietnam maintain standardized procedures to notify children of a parent's execution.

10. There is no apparent distinction between acts of terrorism and peaceful expression. Application of the death penalty for vague political offenses fails to meet even the most basic thresholds of due process, and contradicts Vietnam's own justifications for such a penalty.<sup>19</sup>
11. There have been multiple reports that Vietnam has in recent years committed arbitrary or unlawful killings, motivated by political reasons.<sup>20</sup> In such cases, the Government of Vietnam has informed the families of the deceased that the cause of death was suicide, and at least one such family has reported harassment from the police, urging them to accept the government's official version of events.<sup>21</sup> Such lack of transparency and information violates the rights of the victims' children to information.

12. **Suggested questions:**

- What information does a child of a parent under sentence of death receive regarding the parent's death sentence and the date of the parent's execution?
- What mechanisms are in place to allow a child to have access to information regarding the status of a parent who is sentenced to death and when and where the parent's execution will take place?
- Are there any special considerations given to communication of information regarding an inmate's trial and execution when the individual sentenced to death is a parent of a child under the age of 18?
- Are children of people on death row who have been convicted and sentenced based on terrorism- or national-security-related offenses discriminated against based solely on their familial relationship to someone perceived to be a "threat against national security"?

13. **Suggested recommendation:**

- 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 such information is not in the best interests of the child.

**II. 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 (Article 9).**

14. 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

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<sup>19</sup> U.N. Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 Aug. 2019, U.N. Doc. A/HRC/WGAD/2019/44 at 10 (Sept. 10, 2019).

<sup>20</sup> Vietnam 2018 Human Rights Report, United States Dep't of State, Bureau of Democracy, Human Rights and Labor at 1 (2018).

<sup>21</sup> Vietnam 2018 Human Rights Report, United States Dep't of State, Bureau of Democracy, Human Rights and Labor at 2 (2018).

child and to further what is in the child's best interests.<sup>22</sup> Furthermore, when children are deprived of one of their parents or, even worse, 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."<sup>23</sup>

15. The only evidence of Vietnam's compliance with a child's right to non-separation is Vietnam Penal Code Article 40.<sup>24</sup> Capital punishment does not apply to pregnant women and women nursing children under 36 months old at the time of committing crimes or being tried.<sup>25</sup>

**16. Suggested questions:**

- How many people currently under sentence of death in Vietnam have children under the age of 18?
- Are children of inmates sentenced to death allowed to see their parents? How long are such visits and how frequently are such visits allowed?
- What conditions are placed upon inmates' ability to have visits with their children?

**17. Suggested recommendations:**

- Place a moratorium on the use of the death penalty during criminal sentencing with a goal of complete abolition of the death penalty and commute the sentences of all persons under sentence of death to a sentence that is consistent with international human rights standards.

**III. 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).**

18. When a child abruptly loses a parent as a result of the death penalty, the child is subjected to severe emotional trauma.<sup>26</sup> Studies show that this trauma often leads to mental and physical health problems through the rest of the child's life.<sup>27</sup> The effects threaten the child's material, physical, educational, and mental health well-being.<sup>28</sup> In addition, children of parents in prison or of executed parents often face discrimination and shame as a result of the parent's conviction and sentencing. This discrimination can lead to additional

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<sup>22</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (Feb. 2019), 28.

<sup>23</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (Feb. 2019), 28.

<sup>24</sup> Viet. Penal Code, art. 40, Law No. 100/2015/QH13, Nov. 27, 2015, as amended through to Jun. 20, 2017.

<sup>25</sup> Kien Tran & Cong Giao Vu, *The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry* 14 (2019).

<sup>26</sup> Quaker United Nations Office (QUNO), *Children of Parents Sentenced to Death*, by Helen F. Kearney (New York, US: Quaker United Nations Office, Feb. 2012), 12.

<sup>27</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (Feb. 2019), 15.

<sup>28</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (Feb. 2019), 15.

emotional trauma and can threaten the child's physical health as a result of violence from the community.<sup>29</sup>

19. As a result of Vietnam's use of the death penalty, many children become homeless after one or more of their parents are sentenced to death.<sup>30</sup>

**20. Suggested questions:**

- What types of support are available to and provided for children of parents sentenced to death? How many children receive such support?
- What measures are in place to ensure that children of parents sentenced to death do not face discrimination in any sphere of life?
- How many children experience homelessness after one or both of their parents are sentenced to death?

**21. Suggested recommendations:**

- Place a moratorium on the use of the death penalty during criminal sentencing with a goal of completely abolishing the death penalty and commute the sentences of all persons under sentence of death to a sentence that is consistent with international human rights standards.
- 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 or 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 were 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.

**IV. Sentencing a parent to death may violate a child's right to freedom from torture and other ill-treatment (Article 37).**

22. 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, the child's right to freedom from torture. 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.<sup>31</sup> It is not clear if

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<sup>29</sup> Quaker United Nations Office (QUNO), *Children of Parents Sentenced to Death*, by Helen F. Kearney (New York, US: Quaker United Nations Office, Feb. 2012), 10.

<sup>30</sup> U.N. Special Representative of the Secretary-Gen. on Violence Against Children, *The rights of the child when a parent is sentenced to the death penalty or executed* (Oct. 10, 2017), <https://violenceagainstchildren.un.org/news/rights-child-when-parent-sentenced-death-penalty-or-executed>.

<sup>31</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrow (New York, US: Quaker United Nations Office, Feb.

Vietnam has any policies to protect children from ill-treatment or torture that may result from a parent's death sentence.

23. More broadly, the Human Rights Committee is concerned that the criminal legislation in the Vietnam does not explicitly criminalize torture.<sup>32</sup>

24. Although information is scant, reports discuss horrendous living conditions on death row. Prisons are overcrowded and unsanitary. People in detention do not have access to sufficient food, and medical care is available only to those who can afford it, even though many are in need of treatment 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. 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.<sup>33</sup> Knowing that a parent is living in such harsh conditions on death row compounds the emotional trauma facing the children of those people.

**25. Suggested questions:**

- What support or remedies do authorities provide to children of people sentenced to death as victims of torture and ill-treatment?
- What mechanisms are in place to allow a child to have access to information regarding the status of a parent who is sentenced to death and when and where the parent's execution will take place?

**26. 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.
- Ensure that conditions of detention for people on death row are not sub-standard, and that such people are treated humanely and with dignity, and that their children assured that their parents are not being subjected to torture or other ill-treatment.

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2019), 16.

<sup>32</sup> Comm. on the Rights of the Child, Concluding observations on the third periodic report of Viet Nam, U.N. Doc. CCPR/C/VNM/CO/3 at 6 (Aug. 29, 2019).

<sup>33</sup> Quaker United Nations Office (QUNO), *Children of Parents Sentenced to Death*, by Helen F. Kearney (New York, US: Quaker United Nations Office, Feb. 2012), 16.