



## **Death Penalty and Human Rights to Life**

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### **Abstract**

In recent years, concerning human rights, countries have carefully considered and discussed the death penalty. Some countries argue that the death penalty should be abolished because the right to life is an inviolable sacred right. The article analyzes the provisions of international law on human rights and the death penalty through the 1948 Universal Declaration of Human Rights requirements, the Covenant on Civil and Political Rights, and several other international treaties. The article explores the aspects of why the death penalty needs to be abolished and analyzes the reasons for some countries that have not yet abolished the death penalty.

### **Keywords**

Death penalty, human rights, right to life

**JEL Classifications:** J11, F43

### **1. Introduction**

According to the natural legal view of John Locke (Nguyen Khanh Vinh and Nguyen Ngoc Dao, 2012), an English politician, through their work "*Two Treatises on Government*," the three most basic inalienable human rights are the right to life, liberty, and property. Accordingly, in the State of nature, people have the right to life and freedom, these rights originate from the eternal and immutable nature, and no one can change it. Based on the ideas of John Locke, and Thomas Jefferson, the Declaration of Independence of 1776 ended British rule and officially became an independent free country with a strong affirmation: "*We recognize the natural truths that all men are created equal, endowed by their creator with certain inalienable rights, namely, the right to life, liberty, and the pursuit of happiness*" (Nguyen Dang Dung, 2007).

The right to life is one of the most sacred human rights. The right to life is considered an absolute right and is officially recognized by the 1948 Universal Declaration of Human Rights (UDHR). After that, the right to life continued to be affirmed and concretized in other critical international documents on human rights, such as the 1966 Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child, and the Convention on the Rights of the Children, Convention on the Prevention and Punishment of Genocide, Convention on the Suppression and Punishment of Apartheid Crimes.

Regarding the right to life, the death penalty has become a topic of interest in many countries and is one of the most controversial topics in the world. The death penalty is a punishment applied to deprive a person of life when they are convicted of a serious crime by a legally established court by the law. Currently, many countries around the world have abolished the death penalty. However, the death penalty continues to exist in many parts of the world, especially in densely populated countries. In recent years, the world has witnessed a clear trend to abolish the death penalty or stop applying it in many countries (Death Penalty Information Center, 2019).

In recent years, concerning human rights issues, countries have carefully considered and discussed by countries; some believe the death penalty should be abolished because the right to life is sacred. Inviolable, but some other countries still maintain the death penalty as a legal instrument for the State to protect human rights.

## **2. International law on the right to life and the death penalty**

Modern International Law, for the first time, officially recognizes the right to life as the core right of every individual. This was affirmed as an "international legal standard" in the 1948 Universal Declaration of Human Rights (UDHR) as follows: *"Everyone has the right to life, liberty, and security of person"* (UDHR, 1948) and the International Covenant on Civil and Political Rights (ICCPR) *"Everyone has the inherent right to life. This right must be protected by law. No one may be arbitrarily deprived of his life"* (ICCPR, 1982). *Thus, the right to personal safety associated with the right to life and freedom is understood as the right to be protected by each individual in the community.*

To avoid the arbitrary use of the death penalty, paragraphs 2, 3, 4, 5, and 6 of Article 6 of the ICCPR set forth the conditions for the application of the death penalty in countries including:

- (i) The death penalty may be imposed only for the most severe crimes, based on the law in force at the time the crime was committed;
- (ii) The application of the death penalty must not contravene the provisions of the ICCPR and the Convention on the Prevention and Punishment of the Crime of Genocide;

- (iii) The death penalty can only be carried out based on a legally valid sentence rendered by a competent court;
- (iv) Any person sentenced to death has the right to apply for and be considered for pardon or change of sentence;
- (v) Not to apply the death penalty to persons under 18 years of age and not to execute the death penalty for pregnant women;
- (vi) Article 6 may not be invoked to delay or prevent the abolition of the death penalty.

In 1982, the Human Rights Committee - the body created under the ICCPR to oversee the implementation of this Convention by States parties - made various arguments on the right to life in General Comment 6 as follows:

First, the right to life is "a fundamental human right that in any circumstances, even in a state of emergency, cannot be violated..." (*ICCPR*, 1982, paragraph 1).

Second, the right to life should not be understood in the narrow sense of just the integrity of life. Furthermore, this right includes aspects that ensure human existence. According to this approach, providing the right to life requires states to reduce child mortality and increase life expectancy, particularly measures to eliminate malnutrition and diseases, including passive and active actions (*ICCPR*, 1982, paragraph 2).

Third, one of the common dangers threatening the right to life is war and serious crimes such as genocide or crimes against humanity. Therefore, the fight against war and these crimes is also a guarantee of the right to life. According to that approach, the security of the right to life in Article 6 is linked with the obligation to prohibit activities that propagate war and incite hatred and violence in Article 20 of the ICCPR (*ICCPR*, 1982, paragraph 3).

Fourth, preventing criminal acts that endanger or deprive people of human life is also a significant measure to ensure the right to life. States parties should take steps to prevent and punish arbitrary deprivation of life by any actor, including by state security forces (*ICCPR*, 1982, paragraph 5). In this regard, abduction and disappearance are also considered forms of deprivation of the right to life. Therefore, States Parties must put in place adequate measures and plans for the prevention and investigation of such cases (*ICCPR*, 1982, paragraph 4).

Fifth, regarding the relationship between the death penalty and the right to life, although the ICCPR does not oblige the Member States to abolish it, States are nevertheless obliged to limit its use; expressly, this punishment can only be applied to "the most serious crimes," and restrict its application is also considered a form of guaranteeing the right to life. In addition, States Parties that still apply the death penalty are obliged to ensure that proceedings in cases where the accused or defendants are tried with the death penalty are carried out relatively (*ICCPR*, 1982, paragraph 6).

In addition to General Comment No. 6, the HRC approved General Comment No. 14 (1984). This document emphasizes that war, especially nuclear war is the greatest threat to the right to life, and requires states to limit and end arms races, especially not designing, testing, manufacturing, stockpiling, deploying, and using nuclear weapons - acts that, according to the HRC, should be considered crimes against humanity. Thus, ensuring each person's right to life is directly related to other fundamental rights, including personal ownership, civil and political rights (such as freedom, security, safety, the right to respect the integrity of life, dignity, humanity, honor, prestige, the right to live in peace, against armed conflicts, ethnicity, religion) as well as socio-economic rights (such as the right to health care, the right to escape poverty, combat against natural disasters, epidemics, malnutrition, underdevelopment).

However, the concept of "the most serious crimes" is, in practice, not understood uniformly across countries, and interpretations of this term have resulted in a range of crimes punishable by death.

From the perspective of UN human rights agencies, the HRC says: "The phrase 'most serious crimes must be interpreted to mean that the death penalty must be an exceptional measure' (General Comment of the HRC. 1984), which does not include economic crimes, corruption crimes, political crimes, robbery, kidnapping without fatal consequences, apostasy and drug-related crimes. The United Nations Human Rights Council explains that "most serious crimes" do not include non-violent acts such as financial crimes, religion, or the expression of beliefs or sexual relations. Consensual education among adults According to paragraph 1 of the guiding document "Assurances on the rights of persons facing the death penalty," issued together with Resolution 1996/15 of July 23, 1996, ECOSOC states: "*In countries that have not abolished the death penalty, the death penalty is applied only to the most serious crimes, and it should be understood that the scope of these crimes is he does not go beyond crimes of an international character causing death or other serious consequences.*"

From the above interpretations, it can be seen that from the point of view of the United Nations human rights agencies, the scope of crimes applicable to the death penalty is very narrow, basically limited to murder with aggravation. In practice, international criminal law conventions (the Statute of the International Criminal Court for the trial of war crimes in the former Yugoslavia, the Rome Statute of the International Criminal Court) also does not stipulate the death penalty for crimes, including the most severe crimes on human rights such as genocide, war crimes, crimes against humanity, and crimes of aggression. Instead, the maximum penalty for these crimes is life in prison. In practice, the general trend in the world in recent decades is to reduce and move toward abolishing the death penalty. Although the ICCPR does not require member states to abolish the death penalty to guarantee the right to life; however, states are obliged to limit its use and only apply this punishment to "*the most serious crimes*" (ICCPR. 1948). In addition, limiting the application of this penalty is also considered a form of guaranteeing the

right to life. Besides the ICCPR, several other international conventions on human rights also deal with the right to life, including the Convention on the Rights of the Child (UNCRC, 1989), the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention, 1948), and the Convention on Suppression and punish the apartheid crime (ICSPCA, 1973).

### **3. Implement the Human Rights Commission's recommendations on the right to life and the abolition of the death penalty**

HRC has a periodic review mechanism that will monitor and implement its recommendations. When publishing the proposals, the HRC selected about three recommendations as follow-up recommendations and asked the Member States to report on the implementation of those recommendations over two years. The HRC will also appoint one or two members of the Committee as Special Rapporteurs to monitor the performance of these recommendations. After receiving reports from the Member States, the Special Rapporteur prepares a draft report summarizing the information the Member State provides and other stakeholders. All HRC members will discuss the follow-up report in a public session and adopt a final assessment and rating for each country whose evaluations and ratings are made public.

The HRC publishes the following criteria for ranking the performance of member states' recommendations:

- Grade A (response/action response): countries are rated A if they have taken significant steps in implementing HRC recommendations.
- Category B (partially responsive response/action): the Member States are ranked if steps have been taken to implement the recommendation but still need to provide further information or take different actions.
- Class C (non-response/action): If a Member State has received recommendations, the actions taken or the information provided are irrelevant or not intended to implement recommendations.
- Class D (does not cooperate with HRC): does not submit the Report on the implementation of the recommendations after the HRC has reminded.
- Category E (response/action contrary to recommendations): country adopts measures that lead to consequences contrary to HRC recommendations or refuses to implement recommendations.

Overall, implementing the HRC's recommendations is essential because it enhances the performance of other human rights recommendations. The UPR's accepted offers promote progress towards respecting and protecting human rights, thereby improving the lives of the people of member states and the nation's status.

Of the 193 Member States of the United Nations, 162 have had no executions in at least ten years; 112 countries have abolished the death penalty. For the first time in nearly a decade, the Asia-Pacific region has seen a decrease in

the number of countries applying the death penalty, with seven countries carrying out executions in 2019. Out of 54 members of the African Union, 47 countries have not executed people in more than ten years, 22 countries have abolished the death penalty in law, and in the past two years, executions have only taken place in 5 African countries: Egypt, Somalia, Botswana, Sudan, and South Sudan. The European Union joins the Council of Europe and, in a joint statement, welcomes "(...) the continued decline in the use of the death penalty, which confirms the general trend towards abolition. 2019 is the second year in a row that the execution of the death penalty has been carried out in only 20 countries worldwide. This is a historic low, but 20 countries are still too many (Delegation of the European Union to Vietnam, 2020).

#### **4. Reasons in favor of rejecting the death penalty**

##### **First, the rejection of the death penalty ensures the humanity of the law**

The individual's dangerous behavior is reparable. When an individual is born, that individual has only natural instinctive behaviors that are not harmful. Only when the individual participates in the community does the individual gradually form conscious behaviors. The criminal act of the individual is also a deliberate act. There are gentler ways to permanently isolate the subject from society than the death penalty. At present, any community in the world has the conditions and ability to separate a dangerous individual from their life while ensuring minimal human rights. Each country can clearly distinguish what risky behavior is, the ability to track and arrest hazardous individuals and control dangerous individuals within a small geographical area so they no longer pose a danger to society. So, why not use those ways to permanently isolate the subject from society without taking away their sacred right to life? Doing so will align with the reality of social life while ensuring the humanity and humanity of the law.

##### **Second, abolish the death penalty to avoid wrongdoing**

Wrongdoing is inevitable in judicial activities in any country or historical era. It exists as a necessity in judicial actions. Abolition of the death penalty will reduce the number of innocent people. It was also natural, by the investigation; the trial is conducted only after a crime is committed. Judgment is based on the court, the evidence collected by the investigating agency, together with the results of the litigation process.

##### **Third, the existence of the death penalty does not prevent crime**

Serious crimes occur everywhere, regardless of whether a country upholds the death penalty. Many criminals know for sure what awaits them if caught and convicted, but not because of that, stop their actions.

The root of increasing crime does not depend on the death penalty's existence but on each country's security. Security issues have a dialectical relationship with crime; Good security will hinder criminals and vice versa. But the security of a nation depends on many factors; of which is of paramount importance is the strict enforcement of the law. It is not strict law enforcement that makes security worse. If the law is not strictly enforced, it will inevitably lead to the tolerance of wrongdoing. The reality in the world shows that where the law is strictly enforced, there is stable security. In other words, it is necessary to have a new mindset in the current era; the death penalty is not a deterrent to crime, nor is it the most effective means of expressing the purpose of punishment.

#### **Fourth, abolishing the death penalty is by international law.**

Currently, 135 countries have abolished the death penalty, and 62 countries still maintain the death penalty, usually to punish murderers (Pham Thi Le Quyen, 2018). However, it is impossible to find any criteria on geography, culture, politics, economy, or religion to distinguish between 135 countries that abolished and 62 countries that maintained the death penalty. According to the general trend, the remaining countries will have to abolish the death penalty; to accommodate the vast majority of countries that have abandoned it. The death penalty has no place in the present time, as well as the future because its role no longer exists.

### **5. Reasons for maintaining the death penalty in the law of some countries**

#### **5.1 The right to life must be protected in a state-owned society**

The State establishes social order, an essential foundation for the realization of human rights. In a completely free society where people are not bound by any legal institutions, their existence will be very short because "*despite the peaceful coexistence in the natural state, The human rights to life, equality, and private property have not been guaranteed, since each person is forced to judge and punish those who violate his or her rights*" (Nguyen Khanh Vinh and Nguyen Ngoc Dao, 2012). Therefore, to avoid falling into a state of chaos "*the war of man against man*" (Nguyen Dang Dung, 2007), to regulate relations, and to keep them in a particular order, the people had a common covenant about the establishment of the State. It is not by chance that the State was formed; it is the process through the division of labor in the gentile society when commerce separates from livestock and farming, the community begins to appear private, and the division of opposing classes from which conflicts of interests arise, leading to increasingly fierce clashes. The organization of a clan society based solely on contracts and perpetuating its existence by the prestige of the head cannot relieve tension and govern society. People need to have a unique public power organization strong enough to "*calm down conflicts and keep them in a certain order so that production develops and*

*humanity does not come to an end*" (Hanoi Truth Publishing House, 1984). That organization is called the State.

To ensure its existence, people founded the State. They gave the State the right to formulate and create laws, have the right to regulate social relations by law, and set up a coercive apparatus, manage the general affairs of the society. By law, the State makes regulations of a public imposition to control, prevent or eliminate acts that infringe upon the life, health, and legitimate interests of members of society. It is one of the effective ways to ensure survival and is the foundation for the realization of human rights in each country. From the point of view of Xococrat: the State appears as a necessity; it is evil, a "holy" evil. Obedience to the State, therefore, must be taken as an obligation, a total natural obligation. When living in the State, people seem to have received, for their part, the responsibility to perform a social contract, in which the highest commitment is to comply with the law, whether good or bad.

*"The state, i.e., government, is essential for everyone's life"* (Nguyen Dang Dung, 2007) và *"The state, i.e., the government, is essential for everyone's life"* (Nguyen Dang Dung, 2007). In a letter to Thomas Jefferson on October 24, 1787, Madison James wrote that *"the greatest wish of a government is to ensure neutrality between the different factions and at the same time to control itself from establishing regulations that are contrary to the common interests of the whole society"* (Nguyen Canh Binh, 2017). The government according to Madison's wishes was a government for the majority and *"from a democratic state where the state power belongs to the people to a state accountable to the people"* (Nguyen Dang Dung, 2007).

## **5.2 The death penalty is one of the practical legal tools for the State to protect human rights.**

In terms of subjectivity, people themselves often easily overlook their own mistakes. Life instinct does not allow anyone to confess when committing crimes, and that will be even more dangerous when society no longer has any sanctions that can deter and quell acts that are harmful to life, the health of others. Therefore, before being a punishment, the death penalty is first applied for deterrence and crime prevention. The maintenance of the death penalty as the most severe punishment serves as a reminder to any subject when performing an act to be considered and careful.

Theoretically, the death penalty does not mean it contradicts humanitarian principles. The death penalty is the most severe, depriving the offender of the right to life. This punishment only has a punitive effect but does not mean reforming and educating the offender. Likewise, opponents of the death penalty often criticize that it is inhumane to the offender. However, it should be understood that the humanity of the law manifests itself in the reconciliation between the interests of society and the interests of the offender. Promoting the interests of the offenders while



forgetting the interests of the whole community cannot be considered to satisfy the humanitarian principle of the law. Suppose a person commits a grave crime, causes special damage to society, and continues to threaten the safety of society. In that case, it is inhumane for them to be humane to the entire social community. From a social perspective, there should be a more severe punishment, the death penalty, to ensure the preventive purpose of the sentence. Thus, capital punishment has shown relative humanity through the social aspect of removing dangerous threats to society, deterring and educating others not to commit crimes or give up their guilty intentions.

In addition, the death penalty contributes to improving human dignity, ensuring the quality of life, and ensuring social safety. Upholding the dignity of the human person is also the reason cited by opponents of the death penalty for its abolition. This view holds that applying the death penalty is disrespectful to human dignity when depriving a person of the right to life, a corporal punishment. However, it should also be recognized that protecting human dignity here belongs to the victims and the whole community; crimes are taken very seriously, especially corruption, drug trafficking, rape, and murder. The role of the law is to protect and enhance the dignity of the victim and the community, not just to preserve and enhance the satisfaction of the offender. To a certain extent, the death penalty is considered a good condition to bring a quality of life and security to society.

## **6. Conclusion and Expansion**

International law, with the desire to eliminate acts that infringe on human life, has allowed countries to apply the death penalty for violations, depending on the specific conditions of each country. Thus, it can be seen that the abolition or retention of the death penalty is still a matter of national law.

Although the general development trend is to gradually eliminate the death penalty, the current maintenance of the death penalty still depends on the views of each country. Countries that have abolished the death penalty believe that as long as they live, even if sentenced to life in prison, a prisoner still has hope of reintegration into the community, reduced sentence, pardon, or absolution.

However, the countries that maintain the death penalty still believe that this punishment is a particularly effective deterrent, irreplaceable in preventing murder and many other crimes. In this view, it is necessary to apply the death penalty to those who commit serious crimes such as murder to make others aware that wrongdoing will bring dire consequences for the offenders, thereby preventing others from committing a similar crime. Several studies have provided statistical support for the special deterrent effect of the death penalty on murder. Meanwhile, those who commit serious crimes are very dangerous subjects to society, with a high probability of recidivism; if the death penalty is not used, culture is still at risk.

In addition, the application or non-application of the death penalty will depend on the conditions of each country. In particular, in countries where the social security system is still underdeveloped and people's material life is still

abysmal, maintaining the death penalty is an extraordinary measure to curb the increase in crime. On the other hand, in countries that think the death penalty does not reduce crime, usually nations with developed economies, high educational levels, and high legal awareness, the abolition of the death penalty is inevitable because, for a long time, they did not apply the death penalty in practice. Therefore, the dissolution of the death penalty in law is only a matter of time for states. Therefore, in countries where the economy is still developing, the cultural level is not high, and the legal consciousness is still inferior, the abolition of the death penalty is impossible.

However, States that still apply the death penalty must ensure that proceedings in cases where the accused or defendants are tried with the death penalty are carried out fairly, including aspects such as non-retrospective application, public trial, the presumption of innocence, guarantee of the rights of defense, appeal, and pardon.

### **References**

- The 1989 Convention on the Rights of the Child;  
The 1948 Convention on the Prevention and Punishment of the Crime of Genocide;  
The 1973 Convention on Suppression and punish the apartheid crime;  
The 1948 Universal Declaration of Human Rights.  
The 1966 International Covenant on Civil and Political Rights.  
Resolution 1996/15 of July 23, 1996, ECOSOC.  
Nguyen Canh Binh (2017). *How the US Constitution was made* (4th edition). World Publishing House.  
Nguyen Khanh Vinh and Nguyen Ngoc Dao (2012). *Textbook of History of political and legal doctrines*. People's Public Security Publishing House.  
Nguyen Dang Dung (2007). *The Idea of a Responsible State*. Da Nang Publishing House.  
Death Penalty Information Center (2019), The Death Penalty in 2019: Year End Report, <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2019-year-end-report>, accessed on October 17, 2022.  
Delegation of the European Union to Vietnam (2020), [https://www.eeas.europa.eu/eeas/kh%C3%B4ng-s%E1%BB%AD-d%E1%BB%A5ng-%C3%A1n-t%E1%BB%AD-h%C3%ACnh-l%C3%A0-b%E1%BA%A3o-v%E1%BB%87-nh%C3%A2n-quy%E1%BB%81n\\_vi?s=184](https://www.eeas.europa.eu/eeas/kh%C3%B4ng-s%E1%BB%AD-d%E1%BB%A5ng-%C3%A1n-t%E1%BB%AD-h%C3%ACnh-l%C3%A0-b%E1%BA%A3o-v%E1%BB%87-nh%C3%A2n-quy%E1%BB%81n_vi?s=184), accessed on October 17, 2022  
Pham Thi Le Quyen (2018), Discusses the issue of whether the death penalty should be abolished in the provisions of Vietnamese law, <https://khoaluat.duytan.edu.vn/goc-hoc-tap/ban-ve-van-de-co-nen-loai-bo-muc-an-tu-hinh-trong-quy-dinh-cua-phap-luat-viet-nam/>, accessed on October 17, 2022.  
Marxist-Angelina editorial board (1984). *Mac-Ang jealous anthology* (Volume 6). Hanoi Truth Publishing House.