

NAGOYA UNIVERSITY
GRADUATE SCHOOL OF LAW

Doctoral Dissertation

**LEGAL AND SOCIOLOGICAL STUDY OF THE DEATH PENALTY IN THE
LAO PEOPLE'S DEMOCRATIC REPUBLIC IN THE INTERNATIONAL AND
REGIONAL CONTEXT**

A Dissertation Submitted in Fulfillment of the Requirements for the Degree of Doctor
of Laws Course: LL. D. (Comparative Law) Program in Law and Political Science

Name of the Student: THIENGCHANHXAY Viengvilay

Student ID Number: 431604053

Main Academic Supervisor: Professor OBATA Kaoru

Sub-Academic Supervisor: Professor HASHIDA Hisashi

Sub-Academic Supervisor: Professor MIZUSHIMA Tomonori

Date of Submission: 7th November, 2022

Abstract

This dissertation examines the death penalty in Lao PDR, which demonstrates a unique tendency coupled with abnormal elements. Regardless of the death penalty's existence in domestic black letter law, its practical implementation has been suspended for many years. A serious gap thus exists between law in books and law in practice. Furthermore, one can hardly indicate any progressive movement toward the formal abolition of the death penalty in the Lao PDR, which the international community recommends, especially since the Lao PDR ratified in 2009 the International Covenant on Civil and Political Rights (ICCPR).

From a social perspective, Laotians generally oppose the idea of killing human beings, even by the state, based on their traditional beliefs, which they often tie to the philosophy of peaceful Buddhism. Although not always well-explained by the Laotian society, such a stance may partially explain the phenomenon of the death penalty's practical non-execution in the country. In other words, when the death penalty in the law contradicts people's mindset, its suspension, at least in applied jurisprudence, is one compromise that may emerge between the people and public authorities. However, the *de facto* moratorium of the death penalty, as is the case in Lao PDR, indicates the far more complex nature of the problem.

This dissertation integrates legal analysis and sociological research into the local, regional and international contexts to address the *de facto* moratorium of the death penalty in Lao PDR and its multiple effects on law, society, and trans-border interactions. The sociological and contextual parts of this dissertation present several findings as follows:

First, Laotian courts overwhelmingly apply death sentences for drug-related crimes. Because these drug crimes have a long history and trans-border context, this dissertation focuses on the comprehensive background, criminological concepts, and complex trans-border circumstances between neighboring states. This research also focuses on relations with the relevant foreign actors in the context of drug crimes.

Second, an unfamiliar reader can better understand the scale and gravity of drug crimes in Laos through the prism of the international context. Drug transactions greatly involve Western countries. People traveling from the West and other parts of the world

to Asia, including Lao PDR, often face criminal charges of drug-related offenses in local courts. Simultaneously, gangs belonging to transnational criminal organizations controlling drug production and trafficking freely move across international borders. Therefore, to curb such illegal international transactions, governments in Asia try to deepen international cooperation and design joint policies to tackle drug crimes. The resolution of the drug problem has been set on a national agenda, and the Lao government is eager to crack down on offenders with the highest penalty to death.

Third, the introduction in the text of the law of the death penalty against drug crimes by Lao PDR should also be seen in various international contexts. On the one hand, historically, Vietnamese law generally worked as a model for Lao Criminal Law in the codification process. The relevant provisions of Laotian criminal law follow the line set by Vietnamese law. The direct influence of Vietnam cannot be denied in terms of, for instance, the great number of crimes punishable by death. On the other hand, the maintenance of the death penalty following the 2001 criminal legal reform, was also triggered by the realistic considerations of UNODC experts aware of local trends that severer punishment against drug crimes indeed positively reflected attitudes and legal provisions of neighboring countries regarding the death penalty policy.

Fourth, neighboring countries generally take a severe attitude against drug crimes. China and Vietnam have long borders with Lao PDR, and one of the biggest records of executions against drug criminals. Available statistics say that 68 persons were executed in Vietnam between 1 October 2018 and 31 July 2019. Although the number of executions in Vietnam is terrifying, China is believed to be the world's leading executioner of the death penalty, even though the data on actual executions is strictly classified. If Lao PDR radically eases the punishment against drug criminals, there would be a real risk of turning into a "safe heaven" for drug criminals.

Fifth, regional and sub-regional governments gradually develop harmonizing policies other than severe punishments to tackle drug crimes. For instance, the ASEAN Work Plan on Securing Communities Against Illicit Drugs 2016-2025 has established working groups such as Preventive Education, Treatment and Rehabilitation, Law Enforcement, Research, and Alternative Development to combat drug abuse. However, today such a program is not sufficiently launched in the Greater Mekong Sub-region.

What arguments could be raised in the context of the findings of this dissertation with regard to the way toward the abolition of the death penalty in Lao PDR?

The immediate abolition of the death penalty is unrealistic, given the Lao PDR Government's recent notification of May 2021 that the death penalty must be kept as a form of punishment as a preventive measure against serious crimes to maintain social order and national security. *De jure* abolition of the death penalty may only be achieved at the end of a long and complicated process because the current *de facto* moratorium is a product of a broader structure.

In the meantime, to ensure legal consistency, it is recommended that the one-year strict time limit for execution following the denial of a presidential pardon application be lifted. This timeframe is outlined in Articles 255 and 256 of the current Criminal Procedure Law of the Lao PDR and the previous law.

A radical shift in drug policy is required to progress toward the gradual abolition of the death penalty. Anti-drug policy-makers should first acknowledge the current mainstream interpretation of Article 6 of ICCPR. According to it, drug and other crimes, such as attempted murder, corruption, armed robbery, piracy, abduction, sexual offenses, as well as economic and political crimes, which do not result in intentional human killing, cannot ever serve as a basis for the imposition of the death penalty. Simultaneously they should extensively employ alternative policies to address this issue. A comprehensive policy other than that heavily relying on severe punishment for drug problems should be introduced by developing alternative income approaches instead of drug-producing, selling, and dealing. Moreover, to abolish the death penalty for Lao PDR, these policies must change at the level of the Greater Mekong Sub-region. Therefore, the gradual de-criminalization process for drug use should be fully harmonized in regional, sub-regional, and at least in the Greater Mekong area, including Lao PDR.

Acknowledgements

This dissertation is the most valuable and informative for me, the National University of Laos, the scientific research, and related fields of the Lao PDR.

First, I want to take this opportunity to thank Asian Satellite Campus Institute (ASCI). This program promotes distance learning for senior executives from Asian countries who wish to upgrade their education's proficiency by effectively using this program including myself.

Many thanks to Nagoya University, Graduate School of Law, Center for Asian Legal Exchange (CALE) and all the staff for giving me the warmth, love, and support to make this essential scientific research a great success.

Special thanks to my advisor, Prof. Kaoru OBATA, for his tireless and tireless dedication to helping me, to guide me through suitable and valuable technical lessons to be successful this time around. At the same time, I would like to thank Dr. Ismatov AZIZ for providing me with technical assistance and as an assistant advisor to help me succeed.

I would like to express my gratitude and appreciation to the National Assembly, the Office of the President, the Supreme People's Prosecutor's Office, the Supreme People's Court, the Ministry of National Security, the Ministry of Justice, and a number of other organizations for their assistance with my research.

My research could not be successful without the tireless energy of the body and the constant encouragement of my wife-Souphayvanh, daughter-Sengpasert and all my colleagues at the National University of Laos.

Graduate School of Law, Nagoya University, 7th November, 2022

THIENGCHANHXAY Viengvilay

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Abbreviations

AIPA	ASEAN Inter-Parliamentary Assembly
ASEAN	Association of Southeast Asian Nations
ATS	Amphetamine-Type-Stimulant
BLO	Border Liaison Offices
ECHR	European Convention on Human Rights
EWHC	England and Wales High Court
ICCPR	International Covenant on Civil and Political Rights
IDC	Illicit Drug Control
INCB	International Narcotics Control Board
HMP	Her Majesty's Prison
HRC	Human Rights Council (United Nations)
HRCtee	Human Rights Committee
Lao PDR	Lao People's Democratic Republic
LCDC	Lao Commission on Drug Control
MOU	Memorandum of Understanding
MOES	Ministry of Education and Sports
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
NA	National Assembly
NEM	New Economic Mechanism
OHCHR	Office of the High Commissioner for Human Rights (United Nations)
OSPP	Office of Supreme Public Prosecutor
PM	Prime Minister Office
PTA	Prisoner Transfer Agreement
RA	Republic Act
SAIN	Southeast Asian Information Network
SEZ	Special Economic Zones
SPC	Supreme People Court

Introduction

In this dissertation, the title of which is “Legal and Sociological Study of the Death Penalty in the Lao People’s Democratic Republic (Lao PDR) in the International and Regional Context,” I try to provide a legal and sociological study of the death penalty situation in the Lao PDR in the context of the international and regional circumstances relevant to the death penalty. Lawyers and legal scholars who are informed that Lao PDR had kept a moratorium for more than thirty years may well try to evaluate this situation from a legal view point. Some of them may invoke Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Lao PDR has ratified since 2009. In any way, it would be inevitable for Lao citizens, among others, to wonder why such a situation lasts long. In order to move, even ultimately, to abolition, it should be clarified in what context and how such an unstable situation has been maintained and supported.

When looking at the legal texts providing for the death penalty, it is observed that many crimes are subject to such a punishment. According to the Criminal Code of 2017, 12 death penalty circumstances were listed: treason, rebellion, spying, terrorism, and physical harm against the interests of national security.¹ In addition to the crimes against national security or those causing serious bodily injuries directly to human persons, it is remarkable that drug-related crimes are included in the list. In this sense, the Lao Criminal Code is conceptionally similar to the Vietnamese and Chinese, based on socialist ideologies,² particularly in the criminal matter. The Lao Criminal Law is less strict but well comparable with those of China and Vietnam, which are two significant states having a record of frequent executions against drug criminals.³ Nevertheless, in Lao PDR, there is no execution in practice. It shows an ambiguous situation in terms of legal implementation. This unclear situation has lasted without any indication of movement towards total abolition.

¹ Criminal Code 2017, adopted in 17 May 2017 and promulgated by the Presidential Order No. 118/OP, dated on 26 June 2017.

² Lao PDR, Vietnam, China, Cuba and North Korea are the Socialist countries.

³ Harm Reduction International, “Death Penalty for Drug Offences: Global Overview 2020,” <<https://www.hri.global/death-penalty-2020>>, last accessed 10 July 2021. Vietnam alone accounted for over a third of all confirmed death sentences for drug offences in 2020, which at least 213 people received a death sentence for drug offences in 2020, up from 183 in 2019. There are at least 3,000 people currently on death row for drug offences worldwide.

Analysis based on legal instruments and documents would certainly be useful to understand how serious and structured the situation is. From such analysis, I evaluate current practice, mainly in Lao PDR. However, this thesis's main observations or suggestions address the structure from which the *de facto* moratorium has been brought. Legal observations and suggestions could be mobilized, but broader perspectives based on sociological analysis are needed, for the main purpose of this thesis, that is, to shed new light on how the *de facto* moratorium has been structured.

As indicated above, in the current legal texts, Lao PDR follows the lines set by Vietnamese and presumably by Chinese. However, the actual situation in Lao PDR differs from those in these two states. Historically many legal provisions of the death penalty were inherited from the Penal Code of the Kingdom of Laos in 1970. The last death penalty in Laos was executed in 1989. Since this date, no single execution has been recorded despite strict criminal legal texts, particularly introducing the death penalty for drug-related crimes in 2001.⁴ More precisely, the courts are handing out death sentences rather frequently, but some forms of intervention or simple sabotage of processing always prevent the process toward actual execution. One of the problems resulting from this situation is prison overcrowding.⁵

The international community recommends the Lao PDR to abolish the death penalty and to formalize the moratorium.⁶ Hypothetically, the society in Laos would support this shift because they dislike any human killing – the sentiment believed to be derived from Buddhism. The National Assembly⁷, however, continues to support the idea of the death penalty in law books because, as it considers, this penalty identifies as a preventive legal measure to protect the rights and benefits of the people and social order. Also, neighboring countries of Lao PDR still use the death penalty as the highest level of punishment.

The ambiguous situations of the *de facto* moratorium are much more complicated to be understood in light of the Lao PDR's normative environment. According to the

⁴ The death penalty for drug-related crimes was introduced into the Lao Criminal Law in 2001.

⁵ According to the Report of Department of Detention Supervision of the Office of Supreme Public Prosecutor on 31 December 2018, the number of prisoners on death row was 572 in total.

⁶ For example, the Human Rights Committee, the ICCPR implementation body, recommend the Lao PDR to “maintain the moratorium on executions and [to] give due consideration to the legal abolition”. Concluding Observations on the initial report of the Lao PDR, 23 November 2018, CCPR/C/LAO/CO/1, para. 18.

⁷ Report on drafting the Criminal Code that present to the NA's Session on 15-18 May 2017,

mainstream interpretation of Article 6 of ICCPR, the state parties are expected to abolish the death penalty ultimately. The ICCPR has bound Lao PDR since 2009.⁸ Certainly, the relevant Lao legislation reserves the death penalty only for “the most serious crimes.”⁹ The very same words have been, however, interpreted by the international community to “appertain only to crimes of extreme gravity involving intentional killing”, not to include economic or drug offenses.¹⁰ From this viewpoint, the *de facto* moratorium on execution of the death penalty does not offer a long-term solution to the problem.

It is thus difficult to understand that Lao PDR maintains a *de facto* moratorium from the legal and normative point of view. Therefore, the paper takes structural and contextual approaches to understand the conditions, make constructive reform of Lao Criminal Law, and fill the gap between reality and law. In many parts of this dissertation, I refer to the drug situation and policy because almost all death sentences have been imposed for a drug crime in Lao PDR.

In Lao PDR, the death penalty is a topic that deserves more profound academic discussion. This study aims to answer several research questions in light of this situation. The main question is, why did Lao PDR not use the death penalty in practice despite legally maintaining it? Answering this question requires several ancillary sub-questions: (1). What is the exact situation of the death penalty in Lao PDR? - Why has such ambiguity or a serious gap between law and practice arisen? – Why does such a situation exist without any indication of movement towards abolition? (2). What is the implication of Lao PDR’s international obligation as a contracting party to ICCPR? (3). How far does the Lao people’s general sense against killings affect them? And (4). What is the nature of the structure from which a *de facto* moratorium is brought? How does the drug abuse problem contribute to the situation of a *de facto* moratorium?

The study is divided into several parts to address these questions, including an introduction and a conclusion.

⁸ Lao PDR participated to the ICCPR on 2000 and ratified on 2009.

⁹ According to the Article 51 of the 2017 Criminal Code: “The death penalty is the special punishment to be imposed on offenders in especially serious cases as stated in the specific part of this Penal Code and other related Laws with criminal offences and punishments.”

¹⁰ Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 2019, at para.35

Chapter 1 provides an overview of the Lao PDR's criminal practice regarding the death penalty, detailing the legal system and identifying the criminal offense category for which the death penalty is applicable. In this chapter, the paper provides the historical context for the death penalty, including its definition and actual application in Lao PDR. The most important finding of this chapter is that the vast majority of death sentences are for drug-related offenses.

Chapter 2 analyzes the *Orobator* case (3 June 2009), a drug crime court case, and related circumstances after sentencing before a Lao court, which provides an interesting example indicating what attitude could be taken in the case where a Western country was involved. *Samantha Orobator* was a British drug trafficker whose trial brought international repercussions. She was found guilty of possessing 680 grams of heroin and should have been sentenced to the death penalty,¹¹ but the court sentenced her to life imprisonment and fined 600 million Kip (approximately 60,000 UDS).¹² Because she became pregnant in prison before the court proceeding started, a death sentence was impossible. She was later surrendered to the UK according to some arrangements between Lao PDR and UK and was finally released by a UK court re-sentencing. Lao government objected in vain.

Chapter 3 examines the situation in the Golden Triangle and identifies the subsisting geopolitical vulnerability of the Lao PDR due to its intersectional or multi-bordered location in the sub-region, surrounded by nations affected by organized crimes. According to the United Nations Office of Drugs and Crime (UNODC), seizures of harmful methamphetamine reached 140 tons in East and Southeast Asia in 2019, with a vast majority being produced in the Shan State of Myanmar.¹³ Drug production in Myanmar and its borders with Lao PDR and Thailand have become one of the world's dangerous drug trafficking areas.¹⁴ This chapter will also examine international and Mekong sub-region cooperation in the fight against drug crimes. It also indicates a serious threat to Laos's legal integrity and consistency in the face of the potential

¹¹ Criminal Law, 2005, art. 146, 1. Para. 4 "Any person who produces, trades, distributes, possesses, imports, exports, transports or causes the transit through the Lao People's Democratic Republic of more than five hundred grams of heroin shall be punished by the death penalty."

¹² Vientiane People's Court Decision, no.204, dated August 4, 2009.

¹³ UNODC, Fighting Drug Trafficking in the Golden Triangle: A UN Resident Coordinator Blog, September 20, 2020, <<https://news.un.org/en/story/2020/09/1071192>>, last accessed December 24, 2020.

¹⁴ Ibid.

exercise of extraterritorial jurisdiction by more powerful neighbors. The case of Naw Kham serves as an illustration for this study.

Chapter 4 examines the drug situation in neighboring nations and the death penalty. The current geopolitical contexts in the Lao PDR's neighboring countries are crucial for the punishment of drug-related crimes in Laos. Vietnam carried out many executions in 2018.¹⁵ China has the world's highest number of drug-related executions and death sentences. Thailand has imposed the death penalty for drug-related crimes but reduced the execution.¹⁶ While for several decades Myanmar had maintained the Laos-like *de facto* moratorium, such a tendency changed following the 2021 *coup d'état* by the military junta which resumed executions for political offences. As a result, the execution of four political prisoners in July 2022 was a significant event for the death penalty in Myanmar.¹⁷ Despite abolishing the death penalty for all crimes in Cambodia, drug offenses are severely punished.

Chapter 5 analyzes the problem of legal consciousness or the sense of justice regarding the death penalty in contemporary Laos from three perspectives. First, according to most people's beliefs, causing others' death for any reason is still bad and immoral. This sentiment does not appear in the legislative text and is informal, but it provides a moral foundation for implementing the *de facto* moratorium. Second, due to the establishment of the Lao PDR, socialism became a legal ideology, making change difficult. Thirdly, after ratifying the ICCPR in 2009, the Lao People's Democratic Republic began considering Western criminal law theory. It has a firm foundation in individualist philosophy. One of the most serious points is that these three mutually independent thoughts coexist in Lao People's mindset and thus create such a complex situation. The profound discussion among these three is yet to start.

In Conclusion, some wrapping-up will be provided. Anyway, the situation is too complicated to suggest any straightforward solution. Steps toward eventual abolition, if any, will be slow. Based on the findings in this dissertation and other studies, a serious and cautious discussion is expected.

¹⁵Amnesty International, 2018, 27.

¹⁶ < <https://www.amnesty.org/en/latest/news/2018/06/thailand-countrys-first-execution-since-2009-a-deplorable-move/> >, accessed on 23 December 2021

¹⁷ The Diplomat: Myanmar's Executions Have Turned the Country's Struggle into a Zero-Sum Game <<https://thediplomat.com/2022/08/myanmars-executions-have-turned-the-countrys-struggle-into-a-zero-sum-game/>>, last accessed on 23 September 2022

Chapter I: Overview of the Lao PDR's Practice on the Death Penalty

Introduction

Martin Stuart-Fox, a well-known scholar, writing on the history of Laos in English, constructed in his research a very accurate narrative of how different statehood models evolved in the context of territorial expansion led to the creation of pre-modern Laos.¹⁸ Stuart-Fox contributed meaningfully to the Laotian studies by reflecting on, though in general terms, how particular period in Laotian statehood history implemented a distinctive legal culture and order. To understand the details, namely, why and in what way each period shaped a unique legal culture, one has to refer to select domestic academic literature. Often, such studies assert that various legal traditions, where not the product of domestic law-making process, but were rather imported foreign concepts, adapted into Laotian system in a very unprepared manner.¹⁹ While the scope of the present thesis is limited to the death penalty issue, the author seeks to briefly investigate and explain in this introductory chapter how such past legal orders or cultures, shaped additionally by foreign legal orders and geographical challenges, influenced the philosophies and 'black-letter' law guiding death penalty in Laos. Therefore, this part focuses on historical legal evolution. Whereas a detailed discussion on geographical challenges appears in the latter parts of the dissertation, this introduction discusses general geographical specifics as a broader context to geopolitical challenges.

Broder geographical context

Laos is a small, landlocked country in Southeast Asia. It borders Thailand, Vietnam, Myanmar, China, and Cambodia. Laotian northern borders with Myanmar and Thailand form the so-called Golden Triangle, one of the most insecure and unstable areas in the region. Various ethnic minorities have inhabited the long mountainous border with Vietnam for several centuries. In the western part, Laos has a border with Thailand, to

¹⁸ Refer further to, Martin Stuart-Fox, *Buddhist Kingdom, Marxist State: The Making of Modern Laos* (White Lotus, 1996); Martin Stuart-Fox, *A History of Laos* (Cambridge University Press, 1997).

¹⁹ Phongsavath BOUPHA, *The Evolution of the Lao State*, 2nd (New Delhi: Konark Publishers PVT LTD, 2002), 3-4.

which it shares a complex historical past, including periods of confrontation and flourished trade.²⁰

Pre-colonial era (up to 1893)

In the middle of the 14th century, the prosperous Lane Xang Kingdom was united during the reign of King Fa Ngum.²¹ Later in the 18th century, the Siamese dynasty occupied this kingdom. King Fa Ngum has established a policy of justice providing for the following; “Do not kill any people by yourself, even if a person has committed a wrong, including that against your wife. If the offense is not severe, he/she should not be killed, but should be placed in detention.”²² This form justice maintained that life as extremely valuable, and prohibited the killing of human beings except as implementation of penalty. In terms of the scope of such a punishment, the same document stated as follows: “For the lords who oppressed the common people, the death penalty will be applied.” Additionally, those who murder others will face the death penalty.²³ These statements suggested that common people could not be subjected to the death penalty except for those who committed human killing.

French colonial context (1893 – 1954)

At the end of the 19th century, the Kingdom of Laos fell under the French colonial administration.²⁴ French colonial period (1893 – 1954) is divisible into two sub-periods, the first from 1893 to 1945, and the second from 1945 to 1954.²⁵ During the early years of such rule, the protectorate (a form of colonial administration) introduced civil and penal codes based on the French model. Additionally, the colonial administration established the Royal Institute of Law and Administration in Vientiane designed and implemented based a French curriculum. Hence, during the colonial era, the French civil law tradition and the French language became the official language as did the

²⁰ Ministry of Information, Culture and Tourism, (Vientiane: Pasaxon Printing Houses, 2015), 11.

²¹ Constitution, Preamble, 2015

²² Ministry of Information and Culture, 650 Anniversary of Lane Xang Kingdom, Vientiane, State Printing, 2002, 88

²³ Ibid.

²⁴ Ibid.

²⁵ Lao Studies 1, Ministry of Education and Sports, 2016, 67

Laotian legal and judicial framework. Later on, both Lao and French citizens worked as judges and other judicial officials following their education in France.

The French Protectorate local experts in the French language drafted the First Penal Code of Kingdom of Laos in 1928 and later interpreted into Lao. The 1928 Penal Code had specified the death penalty in the case of murder in various articles as 105, 106, 108, 109, 110, 111, 117 and article 121, intentionally causing physical injury to another person causes to dead.²⁶ According to this Penal Code, the by beheading was the main form of execution method. However, the execution could not take place before the approval by the General Government.

American involvement and continuity of French colonial administration (1955-1975)

U.S. involved in Laos after 1954 aftermath the negative outcomes of the Geneva Conference. By offering an extended political and “humanitarian” support to the Royal Laotian Government, U.S. altered the balance of political framework, and directly intervened into a political process. French colonial administration also remained active in various sectors, including in the areas of political and ministerial counselling.²⁷ Hence Laos remained between 1955 until 1974 as a monarchy with an administration based on the French system with extensive interference into its internal affairs by the US.²⁸

The Ministry of Justice (MOJ) of Kingdom of Laos drafted the 1970 Criminal Law and still had its clear traces connected to the French legal system despite being under the de facto control by the US. The 1970 Penal Code of the Kingdom of Laos was

²⁶ Articles: 105. Anyone who causes death, with premeditation, to a person or tries to kill him, will be punished with the death penalty or that of hard labor for life, if he cannot invoke a means of legal justification for his act; 106. shall be punished with death or hard labor for life, anyone guilty of murdering the person of a public servant in the exercise or in the course of the exercise of his functions; 108. Committing a theft, has killed a person, if the purpose of the murder was to prepare, facilitate or carry out the offense, or to facilitate the flight, or to ensure the impunity of the perpetrators or accomplices of this theft; 109. Whoever, by committing adultery, has killed a person, if the purpose of the murder was to prepare and facilitate culpable relations or to make a witness disappear to ensure impunity; 110. Murder committed on the person of the husband, father or mother; the murder committed by the servant pledges the person of his master; the murder of a monk; 111. Anyone who has given death or tries to kill a person by making him absorb poisons; 117. A husband who willfully kills his wife to get rid of a witness preventing her from committing adultery with another's wife and art. 121. If the death was the result of injuries, the provisions of Article 105 of the Code will be applied.

²⁷ Stuart-Fox, *A History of Laos*, 92.

²⁸ *Ibid*, 84

drafted based on the 1928 Code and included the death penalty for some crimes.²⁹ The 1970 Code expanded the death penalty for five crimes such as: physical harm against the king (Article 89); crime causing death of royal family member (Article 90); Murder³⁰ (Article 142); crime against freedom, tranquility, reputation, and the liberty of a person³¹ (Article 183); and assassination³² (Article 144).

The 1970 Code established death penalty as a maximum crime and provided executions by beheading or shooting in public. This Code prohibited the execution of pregnant women but made no limitations to the application of the death penalty to children or the elderly.³³ Also, the courts could not impose the death penalty for drug crimes or economic offences. The Code stipulated a provision on royal pardon for the death penalty.³⁴ There is no recorded statistics on executions. Kiattisack³⁵ and Lauk-

²⁹ The 1970 Code is recognized as the first Penal Code of the Kingdom of Laos and became into force on 1 March 1970. The government modified the Code from the original text of 1927 with the 1928 edition.

³⁰ Penal Code, art. 142 (1970).

“When it has preceded, accompanied, or was followed by another crime, or when its purpose has been to prepare, facilitate or carry out an offense, or to encourage the escape or ensure the impunity of the perpetrators or accomplices of this offense.”

³¹ Ibid, at para 3, art 183.

“The law does permit any person without an order from the competent public authorities to seize, arrest or detain another person in such a case, if the persons arrested, detained or sequestered have been subjected to physical torture, the penalty will be that of death.” Also, at para 4, art 183.

“The penalty by death also could be used for the person who arrested, detained, or forcibly confined another who is a civil or military official or an official of the administration without the permission prescribed by law.”

³² Art. 144 “In addition the death penalty was to be used when a person committed with premeditation, expectation, or qualified assassination as follows:

1. A crime committed by the wife on the person of the husband, by the husband on the person of the wife, except in the case of a flagrant offense of adultery provided for in article 171 of this Code.
2. A murder committed by the children on the person of the father or the mother, by the son-in-law or the daughter-in-law on the person of the stepfather or the stepmother, by the stepfather or the stepdaughter mother on the person of the son-in-law or the daughter-in-law, by the small children on the person of their grandparents and vice versa, by the uncle and the aunt on the nephew or the niece and vice versa, by the cousins and cousins between -them;
3. A murder committed by the servant pledges on the person of his master.
4. A killing of a monk.
5. A crime committed by the pupil or the student on the person of his teacher.
6. Castration or imprisonment.
7. Mutilation practiced on a living person.”

³³ Ibid, Art. 12

³⁴ Ibid, Art. 11

³⁵ Ket Kiattisack, Execution of the Death Penalty in Kingdom of Laos, Interview by Viengvilay THIENGCHANHXAY, Vientiane Capital (August 16, 2021).

Aphone³⁶ (previously employed as law practitioners in the Kingdom of Laos confirmed that during their more than two decades of service as judges in the court, they never witnessed a death penalty or execution.

From 1963 onwards, the confrontation against anti-colonial forces on the one hand, and French and occupying US forces in Laos on the other, escalated into another Cold war episode. Concerned about the rapid spread of the communism in Asia, the US increased its economic, financial, and military assistance to the Royal Government to take full control of Laos.³⁷ Since 1964, the United States has been using air power for severe and frequent bombing against the Lao People's Revolutionary Army. The war between the US-backed government forces and the emerging National Democratic Revolutionary Forces of Laos has escalated since then.³⁸ On 21 February 1973, the two parties signed the Agreement on the Restoration of Peace and National Reconciliation which led to the establishment of the “peoples’ democratic” government.³⁹

Lao PDR and the following specifics of regime change

The Lao patriotic forces rose to fight for independence under the leadership of the Lao People's Revolutionary Party, with support from the Soviet Union and Vietnam, until complete victory and established the Lao People's Democratic Republic (Lao PDR) in 1975. The new government gradually abolished the feudal and semi-autonomous administration, as well as the previous colonial legal system. Socialist-revolutionary authorities gained a foothold in the country's governance and requested help from the socialist bloc in light of the fact that new authorities faced a challenging task of creating new socialist oriented laws from ground zero. As Laos had no adequate infrastructure in socialist law-making, the former Soviet Union and Vietnam offered extensive assistance in drafting new laws. For a decade, no systematized law existed even in principal fields including criminal matters. The PM order no.53 examined below, however, provided various hints for baseline of penal policy of current regime of Laos.

³⁶ Sida Lauk-Aphone, Execution of the Death Penalty in Kingdom of Laos, Interview by Viengvilay THIENGCHANHXAY, Vientiane Capital (August 17, 2021).

³⁷ Lao Studies 1, Ministry of Education and Sports, 2016, 82

³⁸ Ibid.

³⁹ Ibid, 84

Ten years after the establishment of the Lao PDR and following an example of Vietnam and former Soviet Union, the Lao PDR adopted the so-called “New Economic Mechanism” (NEM) policy, which represented a transition from a “centrally-planned economy” to a “market-based economy” in late 1986.⁴⁰ As the open policy of the government, NEM played an important role not only economic issue, but also in legal drafting as the new policy promoted slogans on transparency and building socialism with a “human face.” Meanwhile, the first constitution of the Lao PDR was enacted in 1991, and from then on, the government adopted an increasing number of laws including those dealing with drugs. In 1997, Laos became a member of ASEAN. Such a membership targeted multiple reasons and interests. As the following chapter show, the growing problem of drug production and insecure borders also played role in ASEAN membership.

In order to understand the socialist discourse of legal development regarding to death penalty in Laos, next sections highlight the historical evolution of the legal framework guiding the existence of the death penalty in books and in practice.

1.1 Death Penalty under the Lao PDR’s Criminal Policy

After the establishment of the Lao People's Democratic Republic, the main problem was the establishment of new laws. The early socialist regime abolished all of the laws and regulations belonging to the old, non-socialist regime. In the absence of new laws, new authorities adopted several major decrees which provisionally governed the Lao PDR. At the same time, the former Soviet Union and Vietnam launched the programs of technical advice and legal support for Lao PDR which later resulted in the adoption of several new laws and bylaws. One of such bylaws was the Prime Minister Order 53/PM (Hereinafter, Order No.53), which was adopted on 15 October 1976 and regulated criminal legal issues of arrests and investigation.

The Order No.53 functioned between 1975 and 1989. In the second half of 1970s, the socialist authorities had to deal with state-construction matters, including law-making, in a very quick and unprepared manner. Therefore, the scope of the Order appeared too general regarding the principles of justice and judicial proceedings. A systematic application of death penalty for political or anti-revolutionary crimes, such

⁴⁰ The Direction of the Party, was provided in the Resolution of the VI Party’s Congress in 1986

as treason or anti-revolutionary activity, was same as criminal law approaches existing in other socialist jurisdictions. Although, there is no reliable statistics, some interviews from witnesses point those regular executions, including extrajudicial killings of royal military officers, took place in northern part of the country

This section will examine the history of the death penalty as the most severe penalty for high treason as specified in Order 53/PM and in Lao PDR's criminal laws in their various editions, most recently the 2017 Criminal Code. While this Order lasted a long time, from 1975 to 1989, following the establishment of the Lao People's Democratic Republic. The Criminal Law added the death penalty to the list of available penalties for serious criminal offenses following its promulgation in 1989. The death penalty remains in law despite several amendments since 1989.

1.1.1 1976 Prime Minister Order No.53

The establishment of the Lao PDR in 1975 resulted in the complete abolishment of all that the codes and procedural laws used in the previous kingdom. This included the establishment of the Supremes' People Assembly or First Legislature with 45 members representing the people around the country.⁴¹ The First Legislature's role was to assist the people in safeguarding and developing the country,⁴² as well as to draft laws. In order to enforce control and regulation over society, however, the new government relied initially on decrees and orders. The executive branch of government often issued these decrees and orders.

In terms of the legal and justice sector, Prime Minister Order 53 (Hereinafter, the Order), regulated criminal law and proceedings. This Order stipulated basic classification of crimes, including the offences punished by death, and laid down emergency-like judicial procedures. The Order provided that only head of treason was subject to the death penalty and no other crime was on the list for death penalty in express manner.⁴³ In 1977, the courts sentenced six people sentenced to death *in absentia* on charges of treason against the state. These people had already left Lao PDR

⁴¹ Now, National Assembly, the Ninth Legislature (2021-2025)

⁴²The Supreme People's Legislation I: <<https://na.gov.la/history-of-the-national-assembly/?lang=en>> , accessed on 20 September 2021

⁴³ Order No 53/PM dated 15 October 1976 on Arrest, Investigations and Court Decision, Para 2, P 16

before the court decisions.⁴⁴ This represented the use of the death penalty for political retaliation mainly for people who opposed the ruling party.⁴⁵

Additionally, this Order established judicial proceeding. In general, the court panel for ordinary cases was composed of three members: a presiding professional judge and two lay judges.⁴⁶ While the court panel for the serious offense case consisted of three professional judges and two lay judges. The Order defined serious cases as those involving a minimum of ten years in prison and a maximum of death.⁴⁷ Moreover, the provisions stated that a Permanent Committee of the Prime Minister's Council had to confirm the death penalty sentence. The court's panel for the death penalty should compose with three professional judges and four lay judges. Both the court trial and the execution of the death penalty should be open to the public.⁴⁸ Moreover, the Order prohibited the execution of the offender without first referring him to the court for prosecution.⁴⁹

1.1.2 The 1989 Criminal Law and its amendments

In 1989, the Lao PDR government established the 1989 Criminal Law.⁵⁰ It listed 162 articles treating with 112 types of offences,⁵¹ including 11 punishable by death penalty.⁵² These 11 offences composed more severe crimes. ⁵³ The 1989 law mainly continued the tradition of penalizing by death the crimes against state. Additionally, as

⁴⁴ Vientiane Court Decision, no 1/VT, dated 4 September 1977.

⁴⁵ David J. Johnson and Franklin E. Zimring, *The Next Frontier, National Development, Political Change and the Death Penalty in Asia* (Oxford University Press, 2009) viii.

⁴⁶ Order No 53/PM dated 15 October 1976 on Arrest, Investigations and Court Decision P. 12

⁴⁷ *Ibid*, P. 14

⁴⁸ *Ibid*, P.17

⁴⁹ *Ibid*.

⁵⁰ During the Fourth Session of the 2nd Supreme People's Assembly held on 23 November 1989 were adopted four first laws of the Lao PDR: The Criminal Law, Criminal Procedural Law, the Law on the People's Court and the Law on People's Prosecutor Office.

⁵¹ "Offence" in the article 6 of 1989 Criminal Law as: All acts or abstentions seen as dangerous for the political, economic and social system of the Lao People's Democratic republic, for the properties of the state, the collectively and individuals, for the lives, health, rights and freedom of the population, for the national stability and social order as mentioned in the penal code will be considered as penal infractions. Also, in the art. 7 of this law defined "crime" as the infractions punished by an imprisonment from five years up to death penalty.

⁵² There were 11 death penalty crimes in 1989 criminal law as follows: Treason of the Nation (Art 51), Rebellion (Art 52), Spying (Art 53), Attempt to life (Art 55), Destruction (Art 56), Disruption of State or Social Undertaking (Art 57), Civil Commotion (Art 61), Destruction or Attack of Detention and Reformatory Centers (Art 62), Murder (Art 81), Robbery of State or Collective Assets (Art 98) and Rape (Art 119).

⁵³ *Ibid*.

in USSR, China, and Vietnam, this law included a set of economic crimes against socialist property punishable by death, the 1989 law excluded from the scope of death penalty the offenders less than eighteen years old and pregnant women.⁵⁴

According to the 1989 criminal law, the execution was to be carried out by firing squad.⁵⁵ However, this law prohibited the execution of those who are under the age of eighteen or who are pregnant at the time the offense was committed, during the court rendered its decision, or the sentence that a court imposes.⁵⁶ This law also listed specific rules or regulations explaining on how executions should be carried out. While such law exists in theory, the Lao People's Democratic Republic has not carried out a single execution since 1989.

The legislation amended the criminal law for the first time in 1996.⁵⁷ What is more interesting than this change is that only Article 135 related to drug trafficking or possession of drugs, which increased the penalty for drug offences up to the life imprisonment instead of 5 years imprisonment for more than 100g of heroin as for example. In regard of the death penalty, it retained for 11 crimes as 1989 version. Nonetheless, it was unclear how to carry out this punishment in practice. It seems that nothing had happened with the death penalty, and it was normal situation of the court proceeding under the law.

1.1.3 The Criminal Law's amendments in 2001 and 2005

The Second Amendment of the Criminal Law in 2001 was a significant milestone as it increased the death penalty to 12 crimes, including drug trafficking or possession. It indicates that the drug problem became a hot topic in the Lao society and the countries in the region, especially the neighboring countries of Lao PDR. Chapter 4 of this dissertation will examine these points in detail.

The Amendment of Criminal Law in 2001 forced Lao judges and international experts to find out why Lao PDR needed to impose the death penalty on drug crimes. The Lao PDR has been a contracting party to the ICCPR since 2000, which provides that a government may apply the death penalty only for the “the most serious crimes.”

⁵⁴ Ibid.

⁵⁵ Criminal Law, Art. 30, 1989

⁵⁶ Ibid.

⁵⁷ Resolution of the National Assembly on the Amendment of 135 of Criminal Law, No.49, 24 April 1996

To make the whole situation logically consistent, we have to presume that Lao PDR considers at least some of drug crimes are among “the most serious crimes” in terms of, not only the Criminal Law, but also ICCPR. This presumption necessarily involves straightforward confrontation with the mainstream interpretation of the words ‘the most serious crimes’ mainly developed by the Human Rights Committee, as indicated in Appendix I in this dissertation.

Although the law provides for the death penalty, the application of the death penalty has not occurred in Laos. In contrast, there has been no serious discussion on the issue of the implementation of death penalty. In fact, the government has attempted to enforce the law to give society faith in the law and justice. However, the courts have not implemented the death penalty despite the government's promulgation of the law on criminal procedure in 2004, which will explain in the following section 1.3 of this Chapter.

The number of death penalty crimes increased in the amendment of *Criminal Law* in 2005 from 12 to 17. Here, in 2005 Criminal Law⁵⁸ included more death crimes comparing with 2001 as: chemical weapons (Article 80), a violation of safety regulations relating to air transport, airports, and harbors [Art. 98(New)], taking of hostages [Art.101 (New)], human trafficking [Art. 134 (New)], and an act that endangers security of boats, airplanes, ships, cars, airports, harbors, or stations [Art.175(New)].

Despite several amendments to the law since 1996, no executions have occurred, even though the rules governing the death penalty's implementation were already included in the Criminal Procedure Law in 2004. As a result, the National Assembly had whether to retain or abolish the death penalty from criminal law prior to considering adoption of the 2017 current criminal code.

1.1.4 The New 2017 Criminal Code

The 2017 Criminal Code is the first version of the Criminal Code⁵⁹ of Lao PDR, which is combination of provisions related to criminal offences and punishments of 20

⁵⁸ Criminal Law 2005

⁵⁹ In Lao legal terminology, the word “Criminal Code” is reserved for the statutory act which incorporates the provisions relating to criminal offences in the laws other than “Criminal Law.”

laws into a single law.⁶⁰ This Code contains 425 articles, which criminalize a total of 314 offences, with only 12 offenses that would carry the death penalty. Compared with the 2005 Criminal Law, the current Criminal Code reduced the death penalty's crimes from 17 to 12, of which three were drug-related crimes.⁶¹ Of the 12 crimes punishable by death, the crime of terrorism and genocide were included, as well as three of them are drug related crimes.

In the current context of rule of law, the implementation of the law by increasing the ownership of the state and controlling by the people are very important issue.⁶² In addition, a majority of National Assembly's members upheld the death penalty in the law. Therefore, the government tries to set up the legal research and several scientific seminars on law and its practice. In this regard, according to the death penalty, even the government has decided to keep, but recommended to open scientific workshop to realize more consistency this punishment.⁶³

One of the fundamental contextual issues around death penalty in Laos is that national government has not applied it for many years, whereas the recently adopted 2017 Criminal Code continuously sets it out as a punishment for serious crimes. Given a gap between a black letter law and practice, parliamentarians are now considering whether this punishment should remain dormant, as it actually did since 1989 or, on the other hand, should now be applied practically to demonstrate the respect for law in Laos. As a part of this ongoing discussion in Laos, the Prime Minister has issued a special Notice of the Government⁶⁴ to domestic scholars and practitioners to research and advice on the potential implementation of the death penalty in practice. Therefore, the next section will look at the current practice of the death penalty in Lao PDR.

⁶⁰ Criminal Code, Art.2, 2017

⁶¹ Criminal Code 2017 provides 12 death penalty crimes namely Article 110 Treason to the Nation, Article 111 Rebellion, Article 112 Spying, Article 114 Physical Harm against the Interests of National Security, Article 119 Civil Commotion, Article 120 Acts of Terrorism, Article 188 Murder, Article 210 Genocide, Article 249 Rape and Murdering, Article 314 Production, Trade, Distribution, Transportation, Possession or Import, Export or transit Heroin, Morphine or Cocaine through Lao PDR, Article 315 Production, Processing, Trade, Distribution, Transportation, Possession or Import, Export or Transit amphetamines, ice or other psychotropic substances through Lao PDR and Article 316 Production, Processing, Trade, Distribution, Transportation, Possession or Import, Export or transit precursors for the production of narcotics through Lao PDR.

⁶² Party Resolution on the Promotion of Quality Judicial Proceeding, No.112, 2 June 2020

⁶³ PM Notice, May 2021

⁶⁴ Ibid.

1.1.5 Summary

In sum, historically, Laos has witnessed various forms of executions. For example, during the French colonial era which lasted from 1893 to 1954, royal courts applied the French style death penalty for cases of murder. Such a practice continued even later with the adoption of the 1928 Penal Code. Between 1955 – 1975, crimes against the king and his family were also punishable by such a death penalty method. In 1970, the government revised the 1928 law and changed the method of execution into firing squad.

The section divided period of complete independence of the Lao PDR from 1975 to the present into two phases: the early period of the Lao PDR's establishment from 1975 to 1989 and the period from 1990 to the present. Much of the first phase lacked laws, and the Order No.53 governed the criminal procedures and court proceedings against criminals. In this phase, the courts imposed the death penalty, to punish political crimes as a form of treason and the method of execution was firing squad. The second phase, which runs from 1989 to the present, begins with the promulgation of the first version of the Criminal Law. This is an explicit criminal law period that criminalizes the death penalty for 11 crimes (in 1989 Criminal Law), as particularly serious offense such as crimes against the state's security, murder, and certain crimes against collectives or state property. The 1989 Criminal Law was amended several times, the most notable of which was the 2001 criminal law, which imposed the death penalty for drug trafficking or possession.

1.2 The Actual Practice of the Death Penalty in Laos

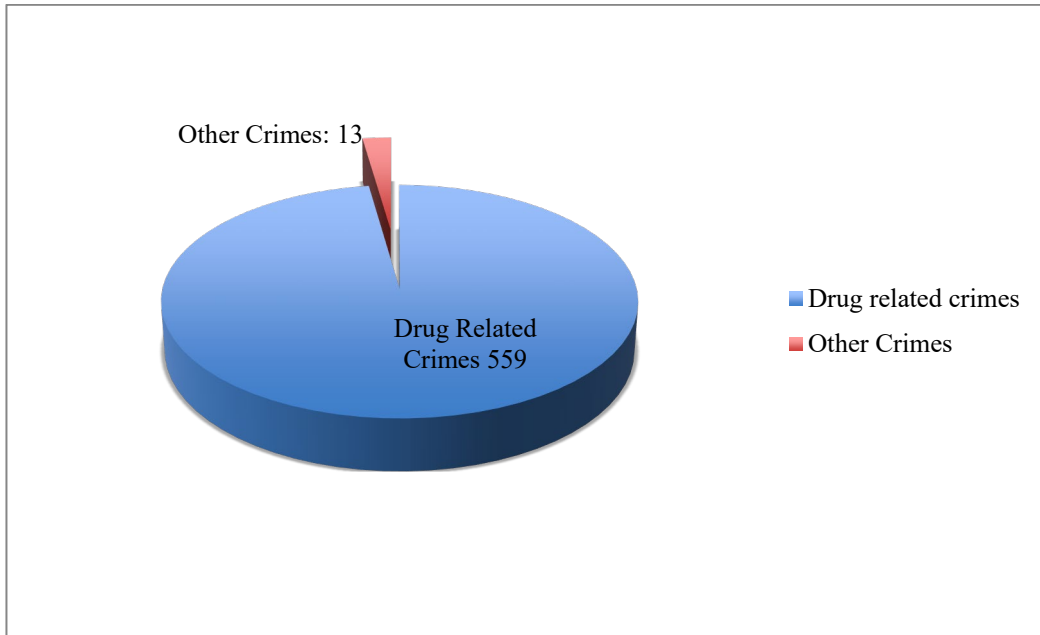
1.2.1 Sentences and Practices of the Death Penalty

In the Lao PDR, the number of people who received death sentences and have remained on death row has increased, especially after the criminal law amendment in 2001. In 1998, the number of individuals sentenced to death was only one for murder case and began to increase dramatically as the courts handed out death sentences for drug-related crimes. By July 2021, the number of prisoners on death row was 572 in total.⁶⁵ Of those on death row, the courts convicted 559 persons of drug related crimes

⁶⁵ Department of Detention Supervision of the Office of Supreme Public Prosecutor, List of Death Penalty, no. 23, 31 December 2018, 20.

while 13 for the other aggravated crimes. Figure 1 presents a graph illustrating the significant number of those placed on death row as a result of the change in the criminal code in 2001.

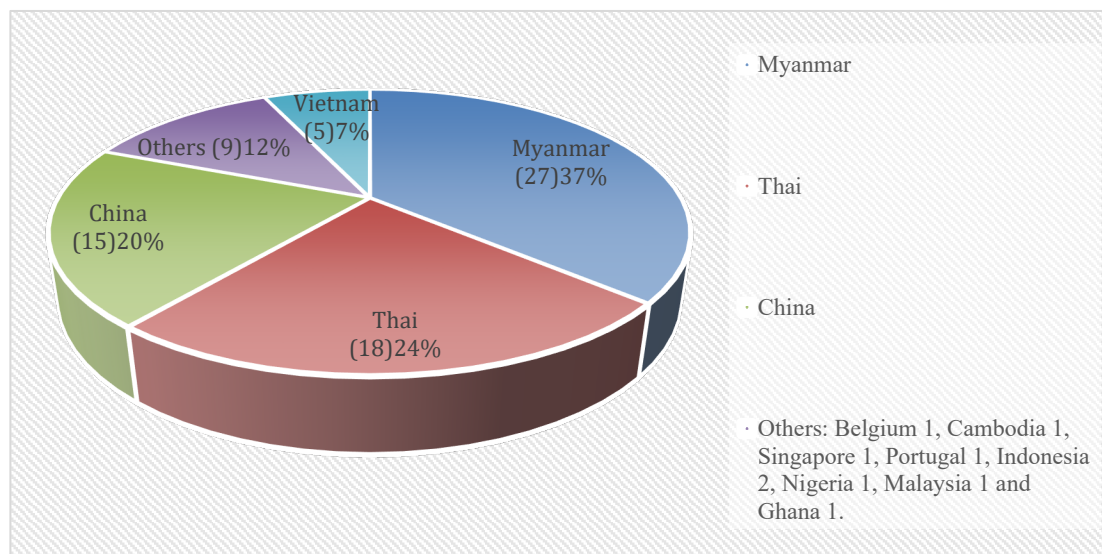
Figure 1: Number of Death Row



Source: Department of Detention Supervision, 18 August 2021

In addition, because of the changes in the criminal code, the courts have placed an increasing number of foreigners on death row. This has reflected the government's policy in trying to meet the regional concern in addressing the drug trafficking. Thus, the government has found itself in the awkward position of trying to meet the pressure of regional concerns over the drug issues while facing international criticism of placing foreigner on death row for such crimes. In 2021, there were 74 foreigners on death row which all condemned to death for drug-related crimes. As Figure 2 below shows, more than 90% of these individuals came from countries that also employed the death penalty for such crimes.

Figure 2: Percent of Foreign Nationals on Death Row in Lao PDR



Source: Department of Detention Supervision, 18 August 2021

Despite the increasing number of individuals receiving the death penalty since 2001, no executions have taken place in Laos. “The main reason why no execution has occurred is wide-spread reluctance among those in charge of execution at grass-roots level, implicitly endorsed by the upper-level officials.”⁶⁶ In general, once the convicted person has exhausted all avenues to pardons, then the state should execute the prisoner executed by firing squad. However, the procedures for actual implementation are not in place.

1.2.2 The Present Procedures for the Death Penalty in the Lao PDR

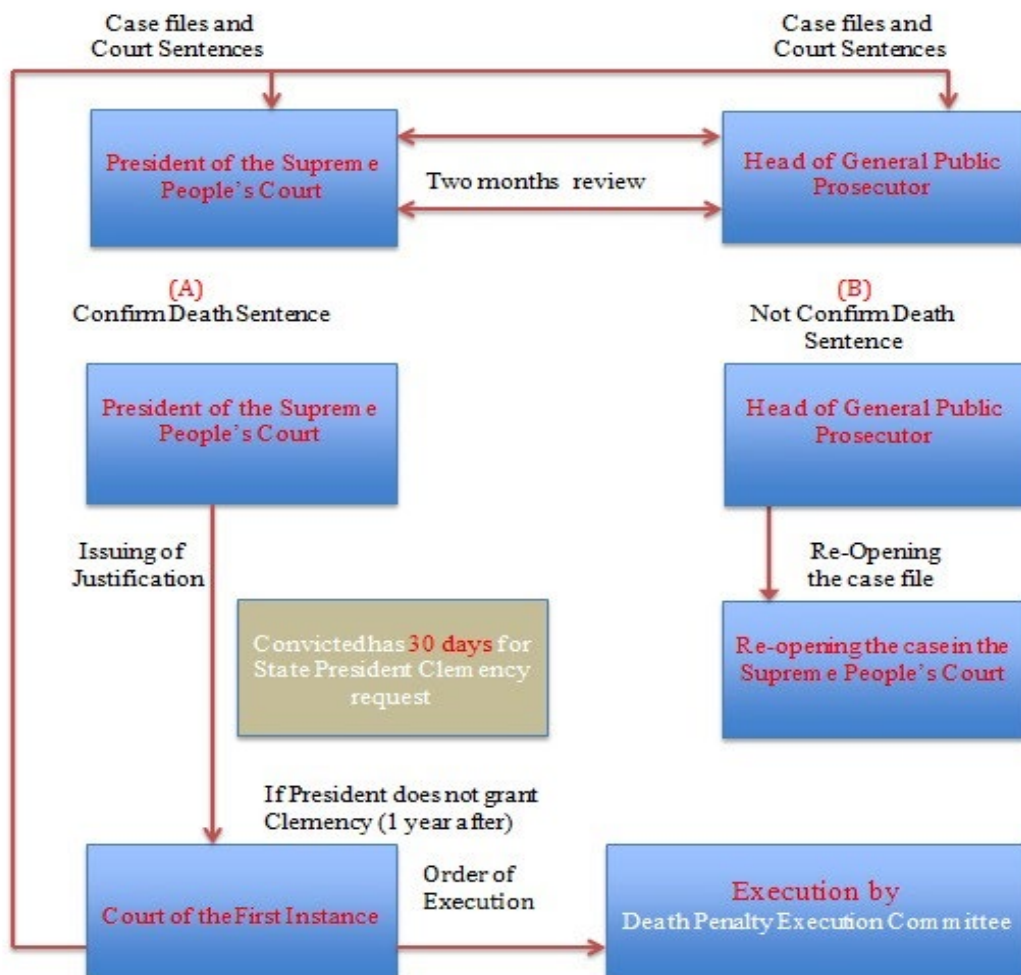
While the law introduced the death penalty in 1989, the explicit provisions and guidelines explain the process and means of execution but do not provide for full implementation. Article 51 of the *Criminal Code* provides that “the execution of the death penalty shall be operated by shooting.”⁶⁷ However, even before this occurs the state must comply with procedural rules in order to ensure justice.⁶⁸

⁶⁶ Lauk-Aphone Sida, Legal Advisor, MOJ of the Lao PDR, former President of the Vientiane Court, interview by Viengvilay THIENGCHANHXAY, November, 2021

⁶⁷ Criminal Code, Art. 51 (2017).

⁶⁸ Please refer to Chapter 5, pp. 88-89.

Figure 3: The Process of the Implementation of the Death Penalty (Articles 255 and 256, Law on Criminal Procedure)



Source: Law on Criminal Procedure, 2017 (Arts. 255-256)

According to Article 255 of the *Criminal Procedure*, after the court gives out a death penalty sentence, it transfers the report of the decision together with the case file immediately to both the President of the People’s Supreme Court and the General Public Prosecutor.⁶⁹ In principle, the President of the People’s Supreme Court and the General Public Prosecutor have a right to revise the case file and the court’s decision. Ideally, they should agree and the time-limit for the consideration of any changes is 60 days from the date of having received the case file and decisions from the court. Both

⁶⁹ Criminal Procedure Law, Art 255, 2017

should issue their own decision, and in cases of disagreement, articles 259-264 clarify the procedures for such an instance.⁷⁰

After the two agree, the President of the Supreme Court sends a notification of confirmation back to the court explaining why the execution should or should not take place. In general, since 1989, most of these notifications have confirmed and ordered that the executions should take place. Accordingly, from the period 2000-2018, out of a total of 244 death prisoners, only 112 of them had received the order from the Supreme Court President that the death penalty could go forward.⁷¹ Even to date, this study could not uncover the reason why only half of these orders did not take place.

Table 1: The Order by the Supreme Court President during 2000-2018

No	Provincial Court	Number of Death Row	Crimes	Number of Order
1	Phongsaly	7	Drug-Related Crimes	0
2	Luang Nam Tha	61	Drug-Related Crimes	53
3	Oudomxay	11	Drug-Related Crimes	0
4	Houaphanh	26	Drug-Related Crimes	24
5	Xiengkhouang	18	Drug-Related Crimes 14, Murders 2	14
6	Louang- PraBang	15	Drug-Related Crimes 13, Other crimes 2	9
7	Borkeo	34	Drug-Related Crimes	6
8	Xayaboury	2	Drug-Related Crimes	0
9	Vientiane	2	Drug-Related Crimes	0
10	Xaysomboune	0	---	0
11	Vientiane Capital	26	Drug-Related Crimes	0
12	Borikhamxay	14	Drug-Related Crimes	6
13	Khammouane	1	Drug-Related Crimes	0

⁷⁰ Ibid, Art 259-264: The Re-Opening the Case

⁷¹ Department of Statistic of the Supreme Court of the Lao PDR, List of Death Penalty, no.112 (Supreme Court of the Lao PDR, 28 October 2019), 10.

14	Savannakhet	13	Drug-Related Crimes	0
15	Saravane	2	Drug-Related Crimes	0
16	Sekong	0	--	0
17	Champasack	8	Drug-Related Crimes	0
18	Attapeu	4	Drug-Related Crimes	0
<i>Total</i>		244		112

Source: People's Supreme Court, 2018

However, following this stage, the defense has the right to seek a pardon from state via the national president. In Laos, the defense cannot appeal but the prosecutor may reject the court decision if new evidence is discovered or a new situation arises (for example, a woman become a pregnant while in confinement). As a result, a large number of cases have sought to gain pardon and escape the death penalty. A death row convict is eligible to request a pardon from the president within 30 days from the date of having received the final decision of the correction of the decision from the head of the People's Supreme Court with no rejection from the Supreme Public Prosecutor.⁷² When the president grants a pardon, this also results in a reduction of sentence.

Almost every year, the president issues an order of amnesty and a reduction of sentence for all prisoners who perform progress in their behavior, including those on death row.⁷³ Table 7 below shows some of the information from the Department of Detention Supervision of the Office of Supreme Public Prosecutor regarding such reduction of sentences. In 2008, out of a total of four death penalty prisoners, two received reduced sentences of life imprisonment and two to 20 years. In 2016, three individuals had their sentence decreased from the death penalty to life imprisonment and 32 death penalty prisoners reduced to life imprisonment in 2018. The courts convicted almost all of these prisoners for drug-related crimes.⁷⁴

⁷² Criminal Procedure Law, rt. 255, 2017

⁷³ The president delivers an amnesty to prisoners every year during National Day.

⁷⁴ Department of Detention Supervision, Supreme Public Prosecutor Office, No.010, dated 31 October 2019

Table 2: the Number of Pardon for Death Penalty Prisoners by the State President

Year	Number of Pardons	Classification of Crimes		Result of Reduction	
		Drug-related crimes	Murder	Life-Imprisonment	20 years Imprisonment
2008	4	4	0	2	2
2009-2015	N/A	N/A	N/A	N/A	N/A
2016	3	3	0	3	0
2017	N/A	N/A	N/A	N/A	N/A
2018	32	31	1	32	0
2019	N/A	N/A	N/A	N/A	N/A

Source: Department of Detention Supervision of the Office of Supreme Public Prosecutor 2019

According to the *Criminal Procedural Law*, the actualization of the death penalty can occur after at least one year in which the process has met all the conditions.⁷⁵ At this point the court's president, from the court of First Instance, has the power to issue the order of the execution of the death penalty.⁷⁶ The issuance from the court president should direct the order to the judgment implementation committee who should organize the firing squad and ensure the execution takes place in an orderly fashion.⁷⁷ However, since 1989, the state has not formed an implementation committee in Laos. This lack of an implementation committee represents a contrast to the similar procedures found in Vietnam which uses such a committee to conduct executions.

Finally, the Textbook of Criminal Procedure in Lao PDR is the result of collaboration between the Lao PDR and Japan. The Office of the Supreme Public Prosecutor, the Supreme People's Court, the Ministry of Justice, and the National University of Laos' Faculty of Law and Political Science represented Laos. The Japan International Cooperation Agency (JICA) represented Japan. This textbook has a detailed description of criminal procedures, including an example of issuing relevant

⁷⁵ Criminal Procedure Law, Art 255 (2017).

⁷⁶ Ibid.

⁷⁷ Ibid, Art. 256

documents as a user guideline. However, the textbook content has not provided any guidelines for judgment enforcement regarding the execution of the death penalty, despite the fact that either authority has the authority to execute the death penalty.⁷⁸

Summary

Although there is no conclusive evidence due to the lack of systematic records, there is sufficient evidence to conclude that the death penalty has existed for a long period of time. The dissertation examined the historical background of death penalty in Laos in three phases: the Lao Lane Xang period, or pre-war period, the French colonial period, and the period following Laos' full independence and establishment of the Lao People's Democratic Republic in 1975. Despite the fact that Laos has a long history of capital punishment, there is no historical evidence of actual executions as required by law. As a result, this Chapter of the study not only examined the death penalty throughout Laos's history, but also examined the current state of the death penalty's implementation in accordance with the law.

In 1989, Lao PDR's first criminal law established 11 death crimes; in 2001, the number of death penalty crimes was increased to 12, which including drug-related crimes. While the 2005 criminal law increased the death penalty to 17 crimes. However, the Lao National Assembly's special session prior to adopting the current 2017 Criminal the death penalty to determine whether it should be retained or abolished. Additionally, a majority vote called for support of the death penalty. As a result, the 2017 Criminal Code comprises 12 death penalty crimes, three of which are drug-related crimes.

Although the death penalty is a severe punishment reserved for the more severe crimes, there are exceptions for pregnant women and children under the age of eighteen years old, and more specifically, the state cannot carry out a death sentenced when the death prisoner receives a presidential pardon. In Lao PDR, the state can execute those people convicted of serious crimes in accordance with the rules outlined in the Criminal Procedure Law, which has established the fundamental principles governing the execution of the death penalty since 2004. The Criminal Procedure Law clearly stated in 2012 and 2017 amendments.

⁷⁸ Criminal Procedure Research Team, Textbook on Criminal Procedure in the Lao PDR. Theppanya Printing House, Vientiane Capital, 2015.

In the past, the method of executions of death penalty in the Kingdom of Laos was decapitation but shifted to firing squad as the Lao PDR came into being. Today, the law allows for the use of the firing squad for all executions, although no executions took place since 1989. There are currently 572 people on death row in Lao PDR, the vast majority of whom are drug-related offenders (90 percent).

As previously stated, the courts sentence a vast majority of death row inmates for drug-related offenses. This statistic indicates that death sentences for drug-related offenses account for the vast majority of cases. As a result, repealing the death penalty provisions for drug-related offenses would be a significant step toward abolition. On the other hand, the serious and negative consequences of narcotic crimes are very likely to increase even without the punishment of death penalty.

The following chapter will use *Orobator's* case to illustrate the policy on exceptions for applying the death penalty against pregnant women, as well as the practice between the Lao and UK governments regarding the Treaty on the Transfer of Sentenced Persons, which demonstrates the uneven of the treaty party's implementation.

Chapter II: The *Orobator* Case

2.1 Facts and Courts' Decisions

2.1.1 Facts

Samantha Orobator, a British citizen born in Nigeria was nearly 20 years old when the police arrested and took her to Phontong Prison in Vientiane on 5 August 2008 for possession of 680g of heroin. ⁷⁹ The British Embassy in Bangkok (Thailand)⁸⁰ obtained the information of her arrest through the Australian Embassy in Vientiane on 7 August 2008.

According to her testimony before a Lao court, the series of criminal activities had been instructed by one of her Nigerian friends and two other Nigerians. Mr. *James*, a Nigerian friend of her, advised her to travel to Thailand, where she would be greeted by Mr. *John*, Mr. *James'* brother who resides in Thailand.⁸¹ Mr. *James* gave her their phone numbers prior to her arrival in Thailand, and informed her that he would inform *John* to wait for her at the airport. *Orobator* arrived in Bangkok on 31 July 2008, but she never met Mr. *John* due to his departure for Laos. As a result, *Orobator's* journey continued with Thai Airways to Laos on the same day, 31 July 2008. While on the plane, she received a call from Mr. *James* inviting her to stay at the Orchid Hotel, which had a room reserved for her.⁸²

Mr. *John* and Mr. *J.J.*, a Nigerian, came to see her at this hotel on August 1, 2008; they took her out for a meal and then moved to another hotel. Mr. *J.J.* and Mr. *John* gave *Orobator's* 68 tubes of heroin in her room on the early morning of 5 August 2008 and instructed her to move to Australia. Additionally, these men told her that someone would come and take her heroin and that she would receive 10,000 Australian Dollars upon her arrival at the Sydney Airport. Mr. *J.J.* and Mr. *John* demonstrated to her how to conceal the heroin in this location. They initially advised her to swallow the heroin, but she was unable to do so. As a result, Mr. *John* instructed her to conceal the heroin on

⁷⁹ One of the prisons in Lao PDR, located in Vientiane and especially detains many foreigners.

⁸⁰ At the time there was no UK Embassy in Laos

⁸¹ Testimony, dated 05, 18, and 27 August and 04 September 2008.

⁸² *Ibid.*

her body. By noon, Ms. *Orobator* had arranged for a Jumbo Tuk-Tuk and was on her way to Wattay Airport.⁸³

While checking her luggage at the airport's checkpoint, customs officers discovered heroin concealed on *Orobator's* body.⁸⁴ As a result, she was arrested and charged with drug possession.⁸⁵ According to the Food and Drug Administration's laboratory analysis results and the certification from the Police Department on Narcotic Drug Prevention, this narcotic drug was heroin contained in 68 tubes and weighing 680g.

2.1.2 The Vientiane Court Decision

As required, the investigating officer submitted the case file to the prosecutor for a court proceeding at the conclusion of the investigation. In fact, she had been prosecuted in the court on 16 February 2009.⁸⁶ On 3 June 2009, the Vientiane Capital People's Court heard the case of the *Public Prosecutor vs. Ms. Orobator*, a British citizen charged with possessing and transporting heroin in the amount of 680g. The court trial began with diplomatic, and academic staff, a lawyer, and an interpreter in attendance.

According to Article 146 point 1 of paragraph 4 of the Lao Criminal Law, Ms. *Orobator* should have been sentenced to death,⁸⁷ but the court had found that she was pregnant for 17 weeks according to the result of the health check-up on 4 April 2009. As stated in Article 32 of the Criminal Law, the courts are prohibited in imposing the death penalty on an offender under 18 years old, or a pregnant women a. Therefore, in this circumstance, the court decided to reduce the punishment from the death penalty to life imprisonment.⁸⁸ The court decided Ms. *Orobator* was guilty of possession and transportation of heroin and imposed life imprisonment with a fine of 600,000,000 Kips (60,000 US\$). The court informed the plaintiff, defendant, and her attorney that they had twenty days to file an appeal if they were dissatisfied with the court's decision. Nonetheless, Ms. *Orobator* did not file an appeal, but instead requested transfer to the United Kingdom.

⁸³ Ibid.

⁸⁴ A record No.15/WTCO dated 5 August 2008.

⁸⁵ Record of Arrest dated 5 August 2008.

⁸⁶ Order of Prosecution, No. 310/PVC, 16 February 2009

⁸⁷ Criminal Law (2005)

⁸⁸ Vientiane Capital People's Court Decision, No.204, dated 3 June 2009

The pregnancy of Ms. *Orobator* was, therefore, the decisive fact in her not receiving a death sentence. At the same time, various officials at the prison may have known or were aware of her pregnancy. The fact of 17 weeks pregnancy on 4 April 2009 shows that she had conceived around 5 December 2008, when she was detained in the Phontong Prison. According to a report published in a UK Newspaper, *John Watson*, a British prisoner in the same jail as *Orobator*, contributed his sperm to help her conceive, but the article discussed no further facts about her pregnancy. In this regard, *Orobator* herself confirmed that she was pregnant due to the artificial inseminations as a result of several sperm donations in plastic bottle from *Mr. John Watson* who was housed in the same prison, but in separate cells.⁸⁹ Moreover, *Orobator* stated that the prison separated men and women and the only contact between the sexes was through a guarded fence. But, she managed to meet with *Watson* outside the watch by guards and took his sperm.⁹⁰ *Watson* also testified that he assisted *Orobator* in conceiving a child as a means for her to evade the death penalty. He confirmed that *Orobator* had asked him for assistance numerous times, and he could not refuse her, despite the fact that he knew it would be difficult for him.⁹¹

Orobator did not appeal the Lao court's decision and agreed to pay the court-ordered fines. Meanwhile, *Orobator* has petitioned the Lao government to transfer her to the UK to serve her sentence, which is based on a treaty between the United Kingdom and the Lao People's Democratic Republic regarding the exchange of such prisoners. The next section will explain the importance of such transaction on inter-governmental level.

2.1.3 Negotiation and Conclusion of the Treaty and a Memorandum of Understanding

According to the Lao law, the judgment in such a case should go into force if the parties do not make an appeal or there is no objection from the prosecutor within 20 days.⁹² The court sent a final decision to the detention management of the Ministry of the National Security for implementation on the criminal matter and to the Office of Judgment Enforcement for arrangements of fine payment. In this regard, while *Orobator*

⁸⁹ *Orobator's* reports on 22 and 26 May 2009

⁹⁰ Certificate of Sentence Execution, 30 July 2009

⁹¹ *John Watson's* testimony, 14 and 19 Feb.2010

⁹² Criminal Procedure Law, Art.207 (2012)

paid 650 USD and 10 Euro or 5,622,000 Kip, she did not pay the remainder of the fine - 594,378,000 Kip out of the total amount of 60,000 USD or 600,000,000 Kip.⁹³

In the meantime, Laos signed a treaty entitled the *Treaty between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons*. This treaty on the matter of transferring of such prisoners represented the first of its kind for Lao PDR, the Laotian side had limited time to review the relevant treaty. On the one hand, the context strongly suggest that it was the UK authorities to stimulate such a process bearing in mind the *Orobator*' case. On the other hand, according to its provision,⁹⁴ it came into force only after the finalization of the sentence against *Orobator*.

In this regard, the UK Prime's Minister sent a letter to Lao Prime's Minister dated 22 June 2009. In this letter, the UK government acknowledged that the Laos courts had sentenced two British prisoners, *Orobator* and *John Watson*, to life in prison for drug offenses. The Government of the United Kingdom was supporting the mission and efforts of the Government of Lao PDR in the fight against drugs. Simultaneously, the UK asked the Lao government to expeditiously consider the two transfer requests in order to continue serving the remaining sentences in the United Kingdom.⁹⁵

Presumably prompted by this letter, the Lao government agreed to sign a *Memorandum of Understanding between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland Concerning the Treaty Between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland* (MOU). Parties, however, agreed on a specific reservation with regard to implementation of the Laotian court's sentence in the UK. During 13-14 July 2009, just three weeks after the court trial, the Lao government held the high-ranking meeting⁹⁶ for considering the claim of UK government on the transfer sentenced persons concerning *Orobator* and *John Watson* at the same time. The outcome of meeting recorded in a Prime Minister notice was as follows: the Lao PDR government decided to transfer *Orobator* to the United Kingdom to serve her sentence at the request of the UK government, but the UK government must

⁹³ Notice of Judgment Enforcement Office, 30 July 2009

⁹⁴ Art.15 of the Treaty: "This Treaty shall enter into force on the 30th day following the date of notification by the Contracting Parties of the completion of all necessary legal procedures."

⁹⁵ The letter of Prime Minister of UK to Lao Prime Minister on 22 June 2009

⁹⁶ Prime's Minister Notice, No. 1234/PM, 17 July 2009

respect Lao laws. As a result, the government should instruct its relevant authorities to monitor *Orobator*'s judgment enforcement in the United Kingdom, and that the British side should acknowledge the fine and find a way to implement it.⁹⁷

As a result, on 28 July 2009, the Lao People's Democratic Republic and the United Kingdom of Great Britain and Northern Ireland signed the MOU.⁹⁸ On behalf of the UK government, the Vice-Minister for Foreign Affairs (Parliamentary Under-Secretary of State) went to Laos and signed it. The MOU indicated that both contracting parties must make the necessary efforts to ensure that each of the countries implement the treaty in accordance with each country's laws.⁹⁹ The mere fact that a very high-ranking government official visited Laos for signing this MOU signaled of politically motivated nature of this document.

2.1.4 Surrender of *Ms. Orobator* and UK Court Proceedings

According to the MOU, the Lao government handed over *Ms. Orobator* to the UK government on 6 August 2009. The UK provided strong commitment on the principle of continuing enforcement of the original sentence as provided in the treaty between nations.¹⁰⁰ Moreover, the UK representative recognized that *Orobator* should pay the rest of the fine to the Lao authority, and noted to encourage her to pay the remaining fines to the Lao authorities upon her return to the UK.¹⁰¹ Additionally, the UK Representative stated that they will provide all information pertaining to the transfer of sentenced individuals.¹⁰²

Ms. Orobator was transferred to the UK on 7 August 2009 and was detained in HM Prison Holloway ever since.¹⁰³ The UK Secretary of State for Justice issued a decision for detaining her in custody on 18 August 2009.

⁹⁷ Ibid

⁹⁸ Memorandum of Understanding Between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland Concerning the Treaty Between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons, Vientiane, 28th July 2009

⁹⁹ Ibid

¹⁰⁰ Memorandum of Transfer of Sentenced Person between Lao PDR and United Kingdom of Great Britain and Northern Ireland, 6 August 2009, Par.5

¹⁰¹ Ibid, Par. 6

¹⁰² Ibid, Par. 7

¹⁰³ Ibid

The court held a hearing of *Samanta Oroborator v Governor of HMP Holloway and Secretary of State* on 8-9 of December 2009.¹⁰⁴ Ms. *Oroborator* claimed that she sought judicial review of the decision of the Secretary of State for Justice of 18 August 2009. In addition, Ms. *Oroborator* pursued an order for *writ of habeas corpus ad subjiciendum* that was directed at the governor of HM Prison Holloway.¹⁰⁵ The court heard the cases in a joint proceeding.

During the London court proceeding, Ms. *Oroborator* claimed that she had not to be fairly treated in the trial with the competent court in Laos, as well as that the court did not deliberate the issues that she was threatened by the other person to commit a crime. It violated the provision of the articles 5 and 6 of the European Convention of Human Rights (ECHR).¹⁰⁶ The court stated in the introductory part of the judgment:

It is the claimant's case that she was convicted and sentenced in circumstances amounting to a flagrant denial of justice and a flagrant breach of Article 6 of the ECHR and that as a consequence her conviction was not by a competent court' within the meaning of Article 5(1)(a) of the ECHR. In the result, it is said on her behalf that her continued detention in the UK is 'arbitrary' for the purposes of Article 5 of the ECHR and therefore 'unlawful.'¹⁰⁷

In this regard, the court attempted to collect the evidence from the participants in the court proceeding, the laws concerned and reasons for the trial as well as the laws and jurisprudence that applied to the Commonwealth and the ECHR's Contracting Parties.

Although the Lao court found 680g of heroin in her body and her luggage, there was no evidence that the purity of heroin was high. The British court has taken this issue seriously and, based on the relevant guideline,¹⁰⁸ a sentence of at least ten years was punishable in 100 percent of the narcotic's purity of 500g. Therefore, the appropriate sentence should have been seven years. In addition to drug issues, the court used several

¹⁰⁴ [2010] EWHC 58(Admin).

¹⁰⁵ Ibid, Introduction, point 5.

¹⁰⁶ ECHR: Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950

¹⁰⁷ [2010] EWHC 58 (Admin), case No: CO/9527/2009, 20 January 2010, Introduction (4).

¹⁰⁸ Sentencing Guideline Council, 2005, P.63

factors to consider that had threatened the rationale of the verdict, such as the actor's intent to commit a crime, the mental health issues she has had in the family, suicide attempts,¹⁰⁹ and so on. Another issue was the pressure on the death penalty, which threatened her life and death during the detention, and the court also invoked the pregnancy as she was 17 weeks pregnant during her trial and gave birth on August 31, 2009, just 27 days after her transfer to the UK. The court's last issue was that she was still young and inexperienced compared to the general offenders. Therefore, the British court considered:

..we think that the appropriate determinate sentence is 3 years. By reason of section 244 of the 2003 Act, if she had been sentenced to a term of 3 years, she would have been released on licence after serving one-half of her sentence. Accordingly, the 3 years must be reduced to 18 months.¹¹⁰

In summary, British courts rendered judgments on the basis of unilateral application of the court tradition as practiced in the United Kingdom and the Commonwealth without hearing from any representative of Lao PDR.

2.1.5 Result and Repercussion of the Case

The *Orobator* case was the first to demonstrate the British government's open involvement, most notably the signing of the *Treaty on Transfer of Sentenced Persons between the United Kingdom and Lao People's Democratic Republic* in London on 7 May 2009, one month before the Vientiane court hearing. However, on the basis of this Treaty and MOU,¹¹¹ the Lao government had agreed to the British government's request to surrender *Orobator* to serve her sentence in the UK.

The *Orobator* case exemplifies Laos' cordial relations with the UK, in which the British government is satisfied with the protection of its citizens in Laos. Also, the Lao PDR, noted in the UK Prime's Minister letter to Lao Prime's Minister, received a

¹⁰⁹ Report dated 30 April 2009

¹¹⁰ [2010] EWHC 58 (Admin), case No: CO/9527/2009, 20 January 2010, para. 138

¹¹¹ Memorandum of Understanding between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland, 28th July 2009

comprehensive overview of the country's anti-drug policies.¹¹² However, the *Orobator* case exemplifies the profound differences between Laos and the United Kingdom. There have been no cases of Lao nationals being convicted and sentenced in the UK. However, there are several cases where UK nationals were convicted of committing serious crimes incarcerated in Laos¹¹³, including Samantha Orobator.

Additionally, the British Court would then reinstate *Orobator* and substantially commute her life sentence to 18 months,¹¹⁴ but she did not pay the fine imposed by the Lao court, despite the fact that the British government endorsed the Memorandum of Understanding on the transfer of sentenced persons between the Lao government and the UK on 28 July 2009. This issue demonstrates another disregard for Lao PDR's laws, in which local policymakers, including both countries, should consider while concluding similar international memorandums and agreements in the future.

2.2 Applying a Normative Framework in Relation to Treatment of Ms. Orobator

The treaty between the Lao PDR and the United Kingdom regarding the transfer of sentenced persons is very important for cooperation in the exchange of prisoners between the two countries, especially the case of *Orobator*. Later, on 28 July 2009, the governments of the Lao PDR and the UK signed the *Memorandum of Understanding between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland Concerning the Treaty between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons* (MOU). The MOU¹¹⁵ was the formal basis of her transfer, but the treaty conditions stipulated that the person in such a case might be given the opportunity of sentenced persons to have the opportunity to serve their sentences within their community.

Besides discussing the general issues of the system of transfer of sentenced persons, this section also examines the conditions and procedures for the actual transfer of prisoners provided in the treaty. An important thing to keep in mind is the continued

¹¹² The letter of Prime Minister of UK to Lao Prime Minister on 22 June 2009

¹¹³ John Watson, was transferred to the United Kingdom in 2010 following the *Orobator* case.

¹¹⁴ [2010] EWHC 58 (Admin), case No: CO/9527/2009, 20 January 2010

¹¹⁵ Memorandum of Understanding between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland, 28th July 2009

implementation of the judgments in the host country, while this agreement specifies the ability to modify the judgments of the sending country to some extent.

2.2.1 The Provisions of the Treaty

2.2.1.1 General Overview of the Treaty

The Treaty between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons was an important normative act, signed in London on 7 May 2009 and entered into force on 25 September 2009. This treaty contains 15 articles and, most importantly, sets out the principles, conditions and procedures for transfer. One of the most important points of this treaty is the continuation of the judgment' enforcement of the sending country, while it also stipulated some conditions that can be amended based on the laws of the receiving country. The treaty was to enter into force 30 days after the date of the declaration of each party in accordance with the legal procedures for ratification of the treaties of each country.¹¹⁶ Accordingly, the National Assembly ratified the treaty on 3 July 2009 which the president promulgating it on 30 July 2009.¹¹⁷

The general principles provided in Article 2 of the treaty included four points, which the contracting parties should respect. First, the contracting parties should afford each other the most comprehensive measure of cooperation in respect to the transfer of sentenced persons under the provisions of the treaty. Second, after a transfer occurs the conditions of the court are that such a person should continue serving the sentence imposed by the courts in the country where a conviction was found. Third, a sentenced person is entitled to show an interest to the transferring party or receiving Party.—In other words, a sentenced person must clearly express his will to either to be transferred or, be kept in the host country. Fourth, either the transferring Party or the receiving Party may request the transfer of convicted persons.¹¹⁸ Moreover, through the diplomatic channel performs the whole process of transfer of sentenced persons.¹¹⁹

¹¹⁶ Treaty between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons, Art. 15, 7th May 2009

¹¹⁷ Note No.016/AE-TD.1 of 26 August 2009 (MOFA of the Lao PDR) to the UK Embassy in Bangkok, Thailand, and the Note No: Cons 02/10, British Embassy, Bangkok, Thailand, 11 February 2010: “confirm that the Prison Transfer Agreement came into force on 25 September 2009.”

¹¹⁸ Treaty, Art. 2

¹¹⁹ Treaty, Art.3, Par.3

2.2.1.2 Conditions and the Procedures for Transfer

The Treaty between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons provided numerous conditions according to the laws and the policies of both parties. These conditions outlined the procedures for the transferring and receiving countries when dealing with sentenced prisoners.

First, one of the essential conditions of the treaty is double criminality, according to which the acts or omissions for which the sentence has imposed would have to constitute a criminal offence under the laws of the receiving party. The sentenced person must be a national of the receiving party and both parties must agree to the transfer.¹²⁰ Besides, the treaty requires a sentenced person to serve one year in the transferring country, with possible exceptions based on mutual agreement.¹²¹

In addition, the judgment should be a final, and no further legal proceedings relating to the offence, or any other offence committed by the sentenced person are pending in the transferring party. Furthermore, the transfer of the sentenced person does not prejudice the contracting parties' internal or external security, public order, or other essential interests.

The last condition of this treaty was that a transfer could not take place if the crime was committed against President of the Lao PDR and his spouse or the internal security of the State. Also, the criminal offences against the President of the National Assembly and his spouse or the Prime Minister and his spouse, or external security of the State, could not be transfer by this Treaty. Another main condition, according to the Article 4 paragraph (h) (iii), an offence under legislation protecting national art treasures has prohibited to the transferring.¹²²

Moreover, the transfer of a sentenced person cannot she or he has made full payment of the fine, restitution of property, or compensation for damages according to

¹²⁰ Treaty, Art. 4 (2009)

¹²¹ Ibid, Para. (e)

¹²² Ibid, Par. (h)

the judgment of the court in the transferring party in the criminal case, if not prescribed in the other agreement between parties.¹²³

For the transfer of prisoners, according to the treaty, following steps take place: first, the transferee must be thoroughly informed by a relevant official of the contents of the treaty. In addition, diplomacy must be used for each transfer case, based on a written request from one of the parties.¹²⁴

In such cases, the convicted person should be the proponent of the transfer party and if the transfer party agrees in principle, the transfer party must notify the receiving party in a timely manner and provide the relevant information.¹²⁵ This information is directly related to the convicted person, such as the criminal history, the date of detention and the place of detention, the record of the offense and a copy of the conviction. There may also be medical certificates or other required information. Conversely, if the sentenced person applies to the receiving party, in such a case the receiving party must also inform the transfer party of such intent. However, if the transfer party agrees in principle with the transfer, it should proceed in the same manner as proposed above.¹²⁶

At the same time, after obtaining information from the receiving party, a transferred person has to confirm his will to be transferred. The receiving party must also notify a transferred person in written form about the consent for the transfer and, simultaneously, carry out necessary procedures with a dispatching party. These documents include: the certificate of citizenship of the contracting party, a copy of the legal documents related to the offense and the sentencing of the case in the territory of the contracting party, and other regulations on detention and other necessary documents.¹²⁷

On the one hand, if the transfer party still wants to proceed with the transfer, the transferring party will notify the receiving party of the decision without delay and in writing. Once the two parties have reached an agreement, a transfer ceremony is held by the relevant authorities of both parties in the territory of the transfer party.¹²⁸

¹²³ Ibid, Par. (i)

¹²⁴ Ibid, Art.5, Par.2 and 6

¹²⁵ Ibid, Par.3

¹²⁶ Ibid, Par.4

¹²⁷ Ibid, Par.5

¹²⁸ Ibid, Par.7

On the other hand, if one of the parties does not agree to the transfer, the other party will immediately notify the other party of the decision in writing. Thereafter, the transferring party will notify the sentenced persons of this information in writing.¹²⁹

2.2.1.3 Principle of Continuing Enforcement of Sentence

The continued enforcement of sentence of the contracting parties is an important issue because it demonstrates the sincerity of the parties to the collective agreement and also shows respect the laws and decision of the transferring parties. In practice, however, the parties should, in effect, adhere to the conventions agreed upon on the basis of the United Nations model of Agreement on the Transfer of Foreign Prisoners' principle.

Pursuant to Article 8 of the Treaty between the Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons, the recipient party must comply with the decision of the transferee country. However, the provisions of this Article shall be in accordance with the contents of paragraph 4, which stipulates that the receiving party may amend the judgment if the content of the judgment and the period of sentencing do not comply with the law of the receiving party for the same offense.

Subject to paragraph 4 of this Article, the receiving Party shall be bound by the legal nature and duration of the sentence as determined by the transferring Party.¹³⁰

Here, paragraph 4 of the said Article, stated:

If the sentence is by its nature or duration incompatible with the law of the receiving Party, that Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence....¹³¹

¹²⁹ Ibid, Par.9

¹³⁰ Ibid, Par.1

¹³¹ Ibid, Par.4

In this regard, if based on the principles set out in the *Model Agreement on the Transfer of Foreign Prisoners* of the UN,¹³² is feasible, which stated that:

In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State. If, however, this sentence is by its nature or duration incompatible with the law of administering State, this State may adapt the sanction to the punishment or measure prescribed by its own law for a corresponding offence.¹³³

While the Article 8 of UK-Laotian treaty seems to be mutually contradictory, it follows the line of the UN Model Agreement. However, in the treaty the transfer party still has the power to be received information and some reports from receiving party¹³⁴

2.2.1.4 System for Interactive Survey of Continued Enforcement

Article 8 of the treaty on the transfer of prisoners between Laos and the United Kingdom sets out principles to ensure that the parties, especially the transfer party, can monitor the implementation of the judgment of the court. Pursuant to the provisions of this Article, the receiving Party shall provide information relating to the continuance of the judgment's enforcement to the transferring party on a regular and periodic basis so that the latter can be assured that the transferred prisoner has implemented the judgment accurately.

The receiving country must provide the information to the transferring country, when the execution of the sentence is completed. When a detention facility releases a criminal before the due date of the execution of the sentence or for any reason the convict is unable to comply with the conviction of the transferring country, then similar arrangement is applied. However, in these cases, the receiving country is obliged to make some specific statements at the request of the transferring country. In this regard,

¹³² UN, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985, P.54: Model Agreement on the Transfer of Foreign Prisoners, at Par. 15

¹³³ Ibid

¹³⁴Treaty, Art. 7 (2009)

the provisions of Article 8, paragraph 7 are still binding and take disadvantage of the transferring party to accept all the information provided by the receiving party, whether for good or bad, the transferring party must not require the receiving party to execute the judgment again.

That paragraph states: “Once the receiving Party has notified the transferring Party under paragraph 6 of this Article that the sentence has completed, the transferring Party shall not seek to enforce the penalty”..¹³⁵ As a result, the *Orobator* case became a model for similar issues arising from the continuity or discontinuity of the court's decision after a sentenced person was transferred.

2.2.2 Application of these Provisions to the *Orobator* Case

In principle, the Treaty on the Transfer of Prisoners between Lao PDR and the United Kingdom was not made specific for the *Orobator's* settlement, but as a general treaty on the transfer of prisoners, which the Government of Laos and the United Kingdom. The treaty was signed on 7 May 2009 as Lao PDR held two Britons on drug charges. One of them was *Orobator*, Lao PDR detained since August 6, 2008 on charges of possession of drugs and preparation for shipment of 680g of heroin. The second was John Watson, arrested in 2003 and sentenced to life in prison on a charge of 6,350 amphetamines.

Two months after the verdict, on 6 August 2009, Lao PDR transferred *Orobator* to the United Kingdom in accordance with the treaty on the transfer of sentenced persons between Laos and the United Kingdom. According to a Lao court judgment, *Orobator* had to pay a total fine of 600,000,000 kip, or \$60,000. She only paid about 6,000,000 Kip before leaving Lao PDR and promised to pay the rest after being transferring to the UK. In accordance with the terms of the transfer specified in Article 4 of the treaty, the transferee may be disqualified from the transfer Party in the event that the transferee has not yet fully payment of her fine, but the provisions of this article may be waived unless otherwise agreed.¹³⁶

The continued implementation of court decision is a complex issue in the provisions of Article 8 of the treaty on the, which the parties had already agreed to

¹³⁵ Ibid

¹³⁶ Treaty, Art.4, Par.(i)

under these terms. According to the provisions of this article, even if the receiving party shall carry out the judgment in the same manner it was practiced in the dispatching party, such judgment shall be in accordance with the law and the period of sentencing of the receiving party.

Also, pursuant to paragraph 3, Article 8 of the Convention stipulates that:

The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, including those governing conditions of imprisonment confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.¹³⁷

The High Court of Justice of the United Kingdom re-considered the *Orobator* case on the basis of the right of the receiving party to set forth in the provisions of Article 8 above. The Court's sentence provides that the original sentence should be implemented in accordance with the law of the receiving Party. Accordingly, the British Court of Appeals, in the *Orobator's* case did not violate the provisions of this article. So, logically, Samantha Orobator should have at least served three years in the UK. However, the court issued a sentence of 18 months only.¹³⁸

Although the change in court judgment is not in conflict with the provisions of Article 8, the content of this article is still confusing as the second paragraph of this Article provides that: "The punishment shall be carried out in the receiving Party as if it had been imposed in the dispatching Party."¹³⁹ On the other hand, the same article in paragraph 1 states that: "The receiving Party is bound by the legal character and length of the sentence as established by the dispatching Party, subject to paragraph 4 of the Article 8."¹⁴⁰ The paragraph 4 of this article states that:

¹³⁷ Ibid, Art.8, Par.3

¹³⁸ Ibid, Par.139

¹³⁹ Treaty, Art.8, Par.2

¹⁴⁰ Ibid, Par.1

If the sentence is by its nature or duration incompatible with the law of the receiving Party, that Party may adapt the sentence in accordance with the sentence prescribed by its own law for similar offence. When adapting the sentence, the appropriate authorities of the receiving Party shall be bound by the finding of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in term of nature or duration, nor exceed the maximum penalty prescribed by the law of the receiving Party may, however, not convert a sanction involving deprivation of liberty to a pecuniary sanction.¹⁴¹

In fact, the British side did not violate the treaty, despite some gaps in the text of the treaty, and both parties ratified it while complying with the UN model. The important point is that both parties should respect the mutual agreement that both parties should treat each other with equality and mutual benefit.

2.3 Significance and Impacts of the *Orobator* Case on the Lao Death Penalty Policy for Drug Crime

Criminal Law of the Lao PDR provided, “Any person who produces, trades, distributes, possesses, imports, exports, transports or causes the transit through the Lao People's Democratic Republic of more than five hundred grams of heroin, as well as ten thousand grams of precursors for the production of narcotics shall be punished by the death penalty.”¹⁴² Fundamentally *Orobator* should have received the death penalty because she was in possession of 680g of heroin at the time of her arrest on August 6, 2008. However, during the trial, the court found that *Orobator* was 17 weeks pregnant and could not render a death sentence according to this exception in the law. Laos subsequently transferred her to the UK under the 2009 treaty where she did not serve out her life sentence that the Lao court had imposed.

The *Orobator* case is notable because it has ramifications for Lao PDR's drug-related death punishment policy. This case also demonstrates how the treaty on the

¹⁴¹ Ibid, Par.4

¹⁴² Criminal Law of the Lao PDR, 2005, Art.146

transfer of prisoners between Laos and the United Kingdom is being implemented by the government in the receiving state. Despite the fact that the court did not sentence *Orobator* will not be sentenced to death, the law requires anybody caught in possession of more than 500g of heroin to be condemned to death,¹⁴³ and *Orobator's* 680g were discovered at the time of her arrest on August 6, 2008. However, the convict will be commuted to life imprisonment instead. According to Lao law, when the courts commute a sentence from the death penalty to life imprisonment the person is not eligible for parole.¹⁴⁴

Orobator became pregnant during her detention in December 2008,¹⁴⁵ which led to the application of a legal waiver that would have stopped her from being condemned to death. The same legislation applies whether *Orobator* falls pregnant after arrest, during inquiry, or during procedure leading to sentencing and the courts should modify the punishment to life imprisonment.¹⁴⁶ Finally, on June 3, the Vientiane Capital Court condemned *Orobator* to life imprisonment and fined her 600,000,000 Kip (60,000 US\$) by the Vientiane Capital Court.

Orobator's case has grown in importance, affecting the detention management system, presumably as a result of a flaw in the authorities' system that allowed *Orobator* to become pregnant while in captivity. Typically, the prisons separate male and female inmates, and the authorities concerned have the responsibility to ensure that male and female convicts have no the chance to interact. In this regard, no report exists as to whether the relevant authorities were disciplined or punished according to the circumstance.

Orobator continued serving her sentence in the United Kingdom based on the treaty on transfer of sentenced persons between the two countries. After returning to England, *Orobator* petitioned the British High Court to reconsider the case, and the British court sentenced her to 18 months in jail without the possibility of other penalties, and as long as she complied with her earlier sentence in Laos.

Orobator's case illustrates the Lao government's prudent policy of punishing drug offenders. Although the maximum penalty for drug offenses is the death penalty, the

¹⁴³ Criminal Law, 2005, Art.146

¹⁴⁴ Ibid, Art.52

¹⁴⁵ Obstetrical Ultrasound, Mother and Child Hospital, Vientiane, 29 May 2009

¹⁴⁶ Criminal Law, 2005, Art. 32

government has some exceptions to the death penalty, such as for pregnant women and children under the age of 18. In *Orobator's* case, in addition to the court commuting her sentence to life imprisonment, she was transferred to the United Kingdom in accordance with the treaty on the transfer of prisoners, which was a treatment not given previously to any other citizen of another European country. The death sentence for drug offenses is a harsh tool used by the Lao government, but the courts should use it with prudence, meaning that the processes must be reasonable and fair.¹⁴⁷

Conclusion

Orobator's case is one of the most well-known in the Lao People's Democratic Republic. The court charged Ms. *Orobator*, a British citizen, with possessing 680g of heroin. The trial in Vientiane began on 3 June 2009. According to Article 146 of the criminal code, *Orobator* should have received the death penalty, but the court chose to impose life imprisonment and a fine of 600,000,000 kip (\$ 60,000) as an exemption under Lao criminal law, because of her pregnancy, despite the fact that the heroin dose was sufficient for the death sentence. However, after the verdict, *Orobator* was transferred to the United Kingdom under the terms of the May 7, 2009 *Treaty on the Transfer of Prisoners*.

Orobator's transfer to the United Kingdom occurred on 6 August 2009 even though the treaty did not come into force until 25 September 2009. Therefore, the government of Lao PDR and the UK signed a memorandum of understanding on 28 July 2009 to facilitate its implementation before the date so that it came into force. In principle, *Orobator* should have continued to comply with the judgment of the Lao court in the United Kingdom in accordance with Article 8 of the treaty, but under the terms of this article the judgment of the Lao court was to be administrated in accordance with the laws of the United Kingdom. The case led to a retrial by the High Court of UK, which decided to reduce her sentence to 18 months in prison without parole. In this case, the British High Court ruled in accordance to the relevant laws and conditions in the UK.

Changes in the Lao courts' sentencing was in line with the laws of the United Kingdom and were in compliance with the terms of Article 8 of the treaty. This change

¹⁴⁷ Order of the Central Committee of the Party on Increasing the Party's leadership at each level to prevent and solve the drug problem, No.02, dated 26 July 2021

of sentencing was within the right of the receiving Party, the United Kingdom, even though it affects the Lao PDR's jurisdiction and laws. As a result, both Laos and the United Kingdom must re-evaluate this problem in order to avoid jeopardizing future mutual cooperation.

The net result of this case produced serious disappointment on the Lao side. It could be, however, predicted that such a result be repeated when similar cases would be pending where Western people are in charge. In this situation, criticism that they provide greater privilege for foreigners might induce the Lao government, at least, suspend execution of death penalty for their own citizens.

Chapter III: Historical Background of the Lao Government Policy Against Drug Crimes

Introduction

The Golden Triangle has been remaining as a key geographical point in drug trafficking since early last century not only in the Lao PDR but also in the region and the world.¹⁴⁸ Moreover, Lao PDR and the neighboring countries such as Thailand and Myanmar have had joint agreements and strategies to control and prevent drug trafficking in this area. Meanwhile, the first introduction of the death penalty for drug crimes into Lao criminal law came in 2001¹⁴⁹ and was one of the targeted plans to decrease the influence of drug crimes and trafficking in the Golden Triangle. The Golden Triangle continues as an area used for producing and trafficking drugs from the remote and urban areas of the Lao PDR and neighboring countries such as Thailand, Vietnam and China, and the region. The traffickers have used convenient routes for transferring narcotics drugs to many destinations.

This chapter discusses the preconditions for the appearance of drug trafficking routes in the Golden Triangle which is mainly due to its location in the highlands of the fan-shaped relief of the Indochinese peninsula. The chapter also explains the geographical scope and magnitude of drug trafficking. Besides, this chapter will analyze the Lao government's policy on drug control and prevention, which has introduced alternative developments on one hand and has applied severe punishment against drug-related crimes on the other hand.

This chapter will also point out the Golden Triangle as an area under tension or dilemma between the Lao governmental policy for economic growth and illicit drug trafficking in the area. On the one hand, the Golden Triangle has now been designated as a special economic zone for the Lao PDR, with the primary goal of promoting tourism

¹⁴⁸ Thein Swe and Paul Chambers, *Cashing in Across the Golden Triangle, Thailand's Northern Border Trade with China. Laos and Myanmar* (Chiang Mai: Mekong Press, 2011), 2. The Golden Triangle has had a long, colorful history. It has been home to at least four different civilizations dating from the first century A.D.: Souvannakhomkham in present-day Laos (Borkeo Province) and Nakhapu Singhanuwat Nakhon or Yonk Nakhon Chaiburi Sri Chiang Saen in Thailand. Over the centuries, till now Souvannakhomkham disappeared in a dense forest while Chiang Saen and Chiang Kong became important Mekong River ports and then, in the nineteenth century, both townships were right on Siam's northern border with French Indochina, while the nearby settlement of Mae Sai thrived on Siam's boundary with British Burma.

¹⁴⁹ Criminal Law, art. 135 (2001).

and integrated development while avoiding the problems associated with various forms of crime such as drug trafficking, human trafficking, money laundering, murder, and other crimes. The Golden Triangle, on the other hand, remains a source of illicit drug trafficking because of great mobility of peoples and goods promoted by governmental policies. This chapter will also look at the Naw Kham case to show not only the atrocities done by the region's most prominent drug traffickers, but also an imminent risk for consistency of the Lao legal order by extraterritorial exercise of jurisdiction by China.

Finally, this chapter presents the framework of the international cooperation against drug trafficking which pertains to cross-border cooperation, mutual legal assistance, and the goal of reducing the supply that are the major objectives to achieve the goal of drug-free ASEAN.

3.1 Historical Background of Drug Trafficking in the Golden Triangle

3.1.1 General Overview

The term – golden signifies opium cultivation and commerce, the early traders in the tri-border region, particularly along the Thai-Burmese border, traded 99.9 percent pure gold ingots.¹⁵⁰ Since its independence in 1948,¹⁵¹ Burma's complex political past was mainly responsible for the illicit production of opium in Asia. The opium and war economy clearly nourish one another in a country that has undergone internal strife throughout the past 60 years and still has the world's longest-served armed insurgency. Nevertheless, the opium production disappeared from Thailand in the 1990s, and in Laos in the early 2000s it declined substantially. Burma's opium production also declined dramatically after 1998.¹⁵²

However, at the turn of the 21st century, the drug trafficking routes from the Golden Triangle and the Pacific region diversified and expanded to include *yaa baa* and many other illicit drugs. The explosion of methamphetamine production in Burma, in which

¹⁵⁰ Lintner, Bertil, *Burma in Revolt: Opium and Insurgency since 1948* (Boulder: Westview Press, 1994)

¹⁵¹ By the 1960s, several rebel groups based in northern Burma, Thailand, and Laos supported their operations through the illegal opium trade, including a faction of the Kuomintang (KMT), which had been expelled from China by the Communist Party. The KMT funded its operations by expanding the opium trade in the region.

¹⁵² Baruah, Aprajita, Sharmistha Baruah. The 'Golden Triangle' – A Hub of Narcotics Trade and Its Repercussions for North-East India vis-a-vis The Act East Policy – An Analysis, Dr., *The Indian Police Journal*, 160-173, Vol.68, Number 1, January-March, 2021.

the person known as *Khun Sa*¹⁵³ played a significant role had reflected the shift away from opium production to *yaa baa*. Much of the production of *yaa baa* was originally trafficked from Thailand to Laos via such towns as Chiang Kong, Nan Loei Nong Khai, Nakhon Phanom, Mukdahan and Ubon Ratchathani. The Thai army and police led strong crackdown in the early 2000s that temporarily diverted this drug and caused the gangs to find new routes including the use of speedboats along the Mekong River.

While several governments have all undertaken attempts to combat drug trafficking, no major progress will occur until the region addresses the poverty and corruption. Burma, for instance, is regarded by local and international observers, as one of the most corrupted countries. Even though a drug-free society in Asia-Pacific is yet hard to imagine in the nearest future, efforts may and should be done to alleviate the suffering caused by illegal drug activities. This region faces a dilemma between drug control on the one hand, and economic development on the other. The great mobility of persons and goods promoted by recent economic development policies in Asia, unfortunately also paves the way for flourishing of drug trafficking of a certain government should be stressed even more. Hence, economic progress, on the other hand, is impossible without sound governance and anti-corruption measures that are effective.

3.1.2 The Effects of Colonialism and War on Drug Production and Trafficking

The Golden Triangle is the name of the area which is border between Laos, Myanmar, and Thailand.¹⁵⁴ It is an area covering 367,000 square miles in Southeast Asia where gangs continue to produce a significant portion of the world's opium since the beginning of the twentieth century.¹⁵⁵ This area is centered on the meeting point of the borders that separate Laos in Tonh Pheung, Myanmar in Thachilek, and in Chiang Kong, Thailand.

¹⁵³ Khun Sa was born on Feb. 17, 1934 and died on October 26, 2007. He represented the seeming impunity of heroin traffickers in the Golden Triangle, which encompassed the northern portions of Myanmar (formerly Burma), Laos, and Thailand. He was a guerrilla leader in the Shan separatist movement, an ethnic minority linguistically linked to Thais that lives in northeast Myanmar. His narcotics enterprise sold opium for firearms, which he exploited to gain control of wide sections of the harsh, isolated, and destitute Shan area.

¹⁵⁴ Pierre-Arnaud Chouvy. Drug trafficking in and out of the Golden Triangle. An Atlas of Trafficking in Southeast Asia. The Illegal Trade in Arms, Drugs, People, Counterfeit Goods and Natural Resources in Mainland, IB Tauris, p. 1-32, 2013.

¹⁵⁵ UNODC, Opium Poppy Cultivation in the Golden Triangle Lao PDR, Myanmar, Thailand, 2006, 7.

The opium production in the Golden Triangle derived from British and French colonialism and during the Vietnam War. In lower Myanmar the British established a monopoly for non-commercial production of opium by 1940s. France retained similar control over opium production in the lowland regions of its colonies in Laos and Vietnam. During the Vietnam war,¹⁵⁶ the CIA trained and armed a militia of ethnic Hmong people in northern Laos to wage an unofficial war against northern Vietnamese and Lao Patriotic forces.¹⁵⁷

Alfred McCoy's study - the Politics of Heroin in Southeast Asia demonstrated how French, and later, the US secret wars in Laos and Vietnam fueled regional and worldwide opium and heroin trafficking. For instance, McCoy discussed how the CIA's vital contribution in Air America, a covert airline which play a role in the growth of heroin addiction among the U.S. military's ranks in Vietnam. Air America, Lao Development Air Service, and Continental Air Service all assisted in transporting million tons of opium from the Laotian cities, Long Tieng and Vientiane to Saigon in Vietnam. Crucially, a key opium trafficker, General *Ouane Rattikone*, who was in charge of the Laotian Army during the 1970s, served as a significant supplier of heroin to Hu Tim-heng, the Vietnamese President *Nguyen Van Thieu's* Intelligence Adviser and commander in chief of the Vietnamese navy. It was further emphasized that the Kuomintang (KMT)¹⁵⁸troops, discreetly aided by the CIA following their flight from southern China to Burma's Shan State, carried out the great majority of the opium trade from Burma to Thailand or Laos.¹⁵⁹

Gibson and Chen reported that from 1950 to 1960, golden triangle was the place which was located for Chiang Kai-shek or KMT army. The KMT army engaged in the narcotics trafficking and operation the drug wars in the border regions of Thailand, Laos, and Burma. The KMT army helped local armies in Burma for anti-Rangoon insurgent

¹⁵⁶ The Vietnam War, also known as the Second Indochina War, and in Vietnam as the Resistance War Against America, was an undeclared war in Vietnam, Laos, and Cambodia from 1 November 1955 to the fall of Saigon on 30 April 1975.

¹⁵⁷ The Lao Patriotic forces opposes the Vientiane government in that time, led by President Kaysone Phomvihane and other Lao revolutionary leaders.

¹⁵⁸ KMT was political party that governed all or part of mainland China from 1928 to 1949 and subsequently ruled Taiwan under Chiang Kai-shek and his successors for most of the time since then.

¹⁵⁹ McCoy, Alfred W. *The Politics of Heroin. CIA Complicity in the Global Drug Trade*. New York: Lawrence Hill Books, 1991.

because of the drug purposes in the borders.¹⁶⁰ During the 1980, in the ages of KMT army settled in golden triangle, this area replaced the Southwest Asia in term of heroin trading in the world. Up until 1990, remnant KMT army inside of Thailand still involved in illicit drug trading, which means that they were preeminent Golden Triangle organization.¹⁶¹

Opium production in the Golden Triangle continues to fund the military operations of several other separatist groups. The largest of these groups was the United Wa State Army (UWSA), a force of over 20,000 troops nestled in the semi-autonomous Wa Special Region. The UWSA was reported to be the largest drug-producing organization in Southeast Asia. About 40-60% of the heroin consumed in New York (U.S.) originated from the Golden Triangle; however, most now come from Mexico, and Colombia.¹⁶² It was approximately 300-400 tons of heroin in the Golden Triangle for conversion to the markets in Europe and the U.S.¹⁶³ The UWSA, along with the Myanmar National Democratic Alliance Army (MNDAA) in neighboring Kokang Special Region, had also expanded their drug enterprises to the production of methamphetamine known in the region as *yaa baa*.

As a result, the production of opium decreased from 70 % to 5% in the Golden Triangle after Khun Sa death in 2007.¹⁶⁴ While much of the production of opium shifted to Afghanistan, other types of narcotics began to be cultivated and trafficked in the East Asia and Pacific region. Such drugs included the growth and production of coca, cannabis, and *yaa baa* (methamphetamine).¹⁶⁵

3.1.3 Sociological Environment on Drug Trafficking within the Golden Triangle

One of the most contentious aspects of drug trafficking and growth in the Golden Triangle was the tension of the sociological environment inside a part of Shan and Wa States of Myanmar, Chiang Rai Province of Thailand and Bokeo Province in Lao PDR.

¹⁶⁰ Gibson and Chen, 2011, *The Secret Army, Chiang Kai-shek, and the Drug Warlords of the Golden Triangle*. Singapore. John Wiley & Sons, p. ix.

¹⁶¹ *Ibid*, 307.

¹⁶² Roderic Broadhurst, "The Golden Triangle: Inside Southeast Asia's Drug Trade," *Australian and New Zealand Journal of Criminology* 42, no. 3 (December 2009): 423.

¹⁶³ Sankar Sen, "Heroin Trafficking in the Golden Triangle," *Politic Journal* 64, no. 3 (June 1991): 243.

¹⁶⁴ Thein Swe and Paul Chambers, *Cashing in Across the Golden Triangle: Thailand's Northern Border Trade with China, Laos, and Myanmar* (Chiang Mai: Mekong Press, 2011), 4.

¹⁶⁵ *Ibid*.

In Myanmar, drug trafficking was strongly bound with geopolitics, anti-drug policies, and inadequate seizures and poppy eradication. Producing and trading drugs in Myanmar's Wa State could act as an economic and political force. This was because the Wa and Shan states of Myanmar used to serve as military buffer zones between Yangon and Thailand. However, amid ASEAN pressure, Myanmar implemented a drug-free policy in 2015. However, Myanmar extended the policy's deadline to 2019. Myanmar was a country that produces a substantial amount of opium and engages in the trafficking of amphetamine-based compounds. While the Shan State continued to be a center for both drug manufacturing and trafficking.¹⁶⁶

The Golden Triangle changed as a result of growth on the Thai side as well. For example, in Thailand, agricultural and alternative development was mostly replaced opium cultivation for more than three decades, beginning in the 1890s. Chiang Saen, being part of Thailand's Golden Triangle, was a popular tourist destination for both Thais and foreigners. At the same time, Chiang Saen's port was linked to Myanmar, Laos, and China for border commerce, which may bring in a lot of money for Thailand's government.

Currently, under the Greater Mekong Subregion (GMS) Economic Cooperation Program, the two main roads are R3A, which connects Chiang Rai Province in Thailand to Xishuanbanna in Yunan Province in China through Bokeo, Luangnamtha, and Oudomxay Provinces in Lao PDR. While the R3B Road connects Xishuanbanna in Yunan Province in China to Maesai in Chiang Rai Province in Thailand via Myanmar. Thailand's Chiang Rai Province is home to three international gateways: Mae Sai crossing points with Thachileik in Myanmar, Chiang Saen Commercial Port with links to Myanmar, Lao PDR, and China, and Chiang Khong Port and Crossing Point, which faces Houyxy District in Bokeo Province, Lao PDR.¹⁶⁷ At the same time, in the Golden Triangle, a large number of Burmese, Thai, and Lao people can cross to each other for a variety of reasons, including business, tourism, and gambling at Laos' side

¹⁶⁶ Nathan Harper and Nathan Tempa, Drug trafficking in the Golden Triangle: The Myanmar problem and ASEAN effectiveness in *Kelompok Studi Mahasiswa Pengkaji Masalah Internasional, Jurnal Sentris KSMPMI* Vol. 1 – 2019, p. 122.

¹⁶⁷ Supatn, Nucharee, 2012. *Regional Development of the Golden and Emerald Triangle Areas: Thai Perspective in Five Triangle Areas in the Greater Mekong Sub-region*, edited by Masami Ishida, RBC Research Report N0.11, Bangkok Research Center, IDE-JETRO, Bangkok, Thailand, p.175.

casino. This is due to the fact that the procedure of crossing the border simply necessitates a border pass (not passport).¹⁶⁸

The development of the Golden Triangle in Lao PDR as a special economic zone is the government's policy to restrict and curb drug trafficking in this area, as well as to encourage people to have jobs and occupations that are legal and to develop the country's infrastructure. Unlike other countries, Lao PDR developed the Golden Triangle into a special economic zone, which has transformed it from a former drug-trafficking hotspot into a full-fledged tourist destination by foreign investors and government funding.

Therefore, one of the importance of their business in the Golden Triangle is casinos, luxury hotels, and shopping centers, improving economic development in this locality and outcome for the Lao government. On the other hand, the UNODC identified that drug trafficking still moving and increasing in this area.¹⁶⁹ Besides, the opium plantation quite often discovers that even the Lao government and local authorities have stringent measures on this prevention.

Nevertheless, the Lao government has had many difficulties controlling and preventing drug trafficking in the Golden Triangle. First, the government felt it was necessary for economic development in this area in the limited fund situation. Second, it was the policy of the government to promote investment as the factor of development. Third, the government sought to enable the Lao people to develop its life conditions must get better as the ASEAN member and the world. Therefore, the objective of the special economic zone would answer these demands in short times. The government should carefully consider these issues on the backside of the investors and the fund source, including the related mechanism to manage and drive for the goal.

3.2 Current Situation of Drug Trafficking Within and Around the Golden Triangle

3.2.1 General Overview

In 2007, the Lao PDR created a special economic zone, in cooperation with other countries in the region, to indirectly reduce the impact of this industry. While this policy improved economic growth and had some effect on drug trafficking, other problems

¹⁶⁸ Ibid.

¹⁶⁹ UNODC, Southeast Asia Opium Survey 2014

emerged that allowed the drug trade to persist. First, the drug gangs discovered a platform in the zone that would give them access to legitimate businesses that would serve as a way to further their trade. Second, an increasing number of youths began experimenting with drugs which attracted a growing number of dealers. The aim of this section is to describe the present situation regarding drug trafficking in the Golden Triangle and to assess how the special economic policy is dealing with the problem.

Looking back to the drug related situation, its production in Myanmar and its borders area with Laos and Thailand has become one of the most significant drugs trafficking areas in the world.¹⁷⁰ The Golden Triangle remains a source for the export of narcotics to the world. According to the UNODC, seizures of harmful methamphetamine reached 140 tons in East and Southeast Asia in 2019, with vast majority produced in the Shan State of Myanmar.¹⁷¹

As a result, this form of trade continues to impact the public order and general security of the border countries. Due to increasing drug use, violent crimes and health issues have also risen. Violent crimes such as murder, rape, and assault have increased since 2010. In addition, because of the increasing use of drugs in this area, the number of individuals tested positive for HIV has grown up. These problems are directly affecting today's young people.¹⁷²

In 2020, the UN reported that there were 40,000 users of amphetamine type stimulants mostly among the Lao youth. The number of users continue to grow in urban centers, as confirmed by the UN's sample urine tests on 14,260 students from 99 schools of 17 provinces.¹⁷³ As such, country in this region confront present and future problems associated with the trade. As mentioned, the government of Laos has cooperated with neighboring countries to strengthen laws while developing the Golden Triangle Special Economic Zone (GTSEZ) in order to deal with these issues.

¹⁷⁰ Sen, Heroin Trafficking in the Golden Triangle, 1991, 241.

¹⁷¹ UNODC, Fighting Drug Trafficking in the Golden Triangle: A UN Resident Coordinator Blog, 20 September 2020, <<https://news.un.org/en/story/2020/09/1071192>>, last accessed December 24, 2020.

¹⁷² SAIN (Southeast Asian Information Network), Out of Control. The HIV/AIDS Epidemic in Burma. A Report on the Current State of the HIV/AIDS and Heroin Epidemics, Policy Options, and Policy Implications, (Chiang Mai 1998).

¹⁷³ UNODC, Drug Trafficking in the Golden Triangle," <<https://www.unodc.org/-/unodc/en/frontpage/drug-trafficking-in-the-golden-triangle.html>>, last accessed December 24, 2020.

With respect to legal changes, Laos has made various revisions in the laws to address both local and regional concerns. For example, in 2001, the government revised the law so that the death penalty would apply for any one in possession of 500g of heroin for 10,000g of amphetamine.

To summarize, the status of drug trafficking in the Golden Triangle has altered in terms of the kind and quantity of substances involved in trafficking. While the opium trade fell dramatically, *yaa baa* took its place. Furthermore, the special economic zone's development has resulted in a new mutation of organized crime in the region. Despite the fact that Laos, in collaboration with ASEAN and other regional actors, has developed policies and legislation that have had an influence on drug trafficking, developments in organized crime have resulted in the continuation of this type of trade. The next section will discuss the current drug control and prevention policies of the Lao government and international communities.

3.2.2 Naw Kham Case

The *Naw Kham Case* is an excellent example of the drug and crime problems that continue to endanger the Golden Triangle and China's role in combating crime along with those of Myanmar, Laos, and Thailand. A source said, Naw Kham was born in Shan state in 1969, but not clearly provided the information of his parents or family.¹⁷⁴ Some reports were that he was to have a Myanmar nationality, but his sister reported that he had also a Lao citizenship.¹⁷⁵ He was one of the famous drug traffickers in the Shan State inside of Myanmar Union.¹⁷⁶ This State shares a border with Lao PDR and Thailand, known as Golden Triangle.

Reports identified Naw Kham - a famous drug trafficker robbed the ships along the Mekong from Golden Triangle to Yunnan, Kunming (China). In 2011, Naw Kham's gangs robbed the boats owned by a Chinese casino investor in Lao PDR zone of the

¹⁷⁴ The Irrawaddy: Naw Kham sentenced to death but may appeal, 6 November 2012, <<https://www.irrawaddy.com/news/burma/naw-kham-sentenced-to-death-but-may-appeal.html>>, access on 10 January 2022

¹⁷⁵ Laotian authorities do not seem to confirm his citizenship. Another source reports that he had many nationalities including those of China, Thailand and so on.

¹⁷⁶ CCTV Com, "Background: Life of Naw Kham," CCTV Com, September 20, 2012, accessed January 13, 2022. <<https://web.archive.org/web/20150419203557/http://english.cntv.cn/program/newsupdate/20120920/103256.shtml>>.

Golden Triangle.¹⁷⁷ Later, the same year 13 Chinese sailors were murdered as a consequence of an ambush on two Chinese ships, *Hua Ping* and *Yu Xing 8*, in the Mekong River near the Thai river town of Chiang Saen.¹⁷⁸ Naw Kham was suspected in these two incidents. As a result of this affair, he became a wanted criminal by the Chinese, Thai and Myanmar investigators. Furthermore, 920,000 methamphetamines or *yaa baa* tablets with an estimated street value of 3 million USD were discovered by the police aboard these ships, which were left behind by the robbers.¹⁷⁹

In the aftermath of the October 5, 2011 tragedy that left 13 crew members dead, Chinese authorities worked with authorities in the region, including Laos, Thailand and Myanmar, to work together to track down and prosecute the perpetrators. Investigators found that Naw Kham was behind the incidents along the Mekong River, including this tragedy.¹⁸⁰ After months of follow-up, in December 2011, investigators discovered that he was hiding in his wife's house in Bokeo province, Lao PDR. The Chinese and Lao polices tried to arrest him but failed, but managed to arrest his gang and wife.¹⁸¹ Finally, on 25 April 2012, Naw Kham was arrested by Lao polices in Ban Mom, Tonpheung district, Bokeo province. The Ministry of Public Security held him in Laotian custody. The special hand over of Naw Kham from Laos to China occurred on 10 May 2012 on the basis of cooperation in bringing criminals to justice at the request of Chinese authorities.¹⁸²

After a three-day trial of the intermediate People's Court of Kunming, on 21 September 2012 Naw Kham and five others accomplices eventually pleaded guilty to

¹⁷⁷ Tan Danielle, Chap. 7, "Chinese Enclaves in the Golden Triangle Borderland, An Alternative Account of State Formation in Laos" in: Nyíri Pál and Tan Danielle. Foreword by Wang Gungwu, *Chinese Encounters in Southeast Asia How People, Money, and Ideas from China Are Changing a Region*, University of Washington Press, Seattle and London, 2016.

¹⁷⁸ Bangkok Post, "Shan Drug Lord Suspect Nabbed in Laos, Sent to China," April 27, 2012, accessed January 13, 2022. <<https://www.bangkokpost.com/thailand/general/290626/shan-drug-lord-suspect-nabbed-in-laos-sent-to-china>>.

¹⁷⁹ China's Strong Arm: Protecting Citizens and Assets Abroad, Chapter Four, "Murder on the Mekong: The long arm of Chinese law," 92 <<https://www.tandfonline.com/loi/tadl20>>

¹⁸⁰ Global Times, "Drug Lord Nabbed in Laos Raid: Thai Media," Global Times, April 27, 2012, accessed January 13, 2022. <<https://www.globaltimes.cn/content/707084.shtml>>

¹⁸¹ China's Strong Arm: Protecting Citizens and Assets Abroad, Chapter Four, "Murder on the Mekong: The long arm of Chinese law," 92 <<https://www.tandfonline.com/loi/tadl20>>

¹⁸² Laos signed the Extradition Convention with China on 04 February 2002 and became into force on 15 August 2003 (treaty between the Lao PDR and the People's Republic of China on Extradition). The handover of Naw Kham to Chinese authorities, on the other hand, was unique and did not correspond with the agreement at all, as it was a cooperative effort by the authorities of the two nations to bring him to justice.

charges of murder, kidnapping, drug smuggling and ship hijacking.¹⁸³ Therefore, the Kunming Intermediate People's Court sentenced Naw Kham and three other defendants, Hsang Kham (Thai), Yi Lai (stateless person), and Zha Xika (Laotian) to death. While other two more, Zha bo and Zha Tuobo, were sentenced to death with a reprieve and eight years in prison, respectively.

Furthermore, on 26 December 2012, the Yunnan Higher Court denied Naw Kham's appeals, upholding the death punishment. On 1, March 2013, China executed Naw Kham and three other defendants by lethal injection in Kunming.

Despite the shift from an open drug trafficking to the development of a special economic zones, the Golden Triangle remains an area where drug trafficking continues to dominate among various transnational crimes. On the other hand, border commerce and active utilization of special economic zones plays a significant role in terms of international economic transactions. Distinguishing between criminal and non-criminal economic operations is very difficult as they often go hand-by-hand. The case of Naw Kham exemplified the perilous border commerce between China, Myanmar, Laos, and Thailand, which generated billions of dollars.

China, Myanmar, Laos, and Thailand continue to monitor the Mekong for the safety of trade along the Mekong. In 2021, for example, investigators solved 8325 cases, recovered 34 tons of narcotics, and detained 8043 suspects. While this patrol can deter some narcotics trafficking, illicit border crossings, and computer crimes, yet it is unknown how many of such crimes remain undiscovered.¹⁸⁴ Through the combined patrol and law enforcement collaboration, the four nations have improved intelligence communication and coordination, yielding productive results in the fight against drug trade, smuggling, and illegal immigration. Furthermore, appropriate collaboration structures among Mekong River nations are becoming more diverse and effective.

This incident also shows that the Chinese authorities take as granted of extraterritorial exercise of their competence to bring drug traffickers to justice. In this context, China has one of the highest use of execution against drug crimes. Since Lao PDR maintains *de facto* moratorium of execution, it brings big discrepancy and gap

¹⁸³ Irrawady Publishing Group, "Naw Kham Sentenced to Death but May Appeal."

¹⁸⁴ China Radio International in Vientiane, Lao PDR. Patrol the Mekong 2021, published 30 December 2021, accessed 4 January 2022.

even among criminals who committed crimes in Lao territory. Their fates depend on whether the Lao PDR or China carries out executions.

3.2.3 Golden Triangle-One of Special Economic Zone in the Lao PDR

Today, the Lao People's Democratic Republic (Lao PDR) has 11 Special Economic Zones (SEZ), including 5 in Vientiane, the capital city, and 6 in the provinces. Laos established the first SEZ in 2003 in Savannakhet as the Savan-Seno Special Economic Zone in the center, and the Boten Beautiful Land Special Economic Zone in Luangnamtha province in the north. While Chinese investors formed the Golden Triangle Special Economic Zone (GTSEZ) in Bokeo in 2007, it quickly became one of the most successful SEZs in term of infrastructure and economic development in the Lao PDR.

Chinese investors have operated the GTSEZ since 2007 in Bokeo province such as the Hong Kong-registered Kings Roman group, with a total value of US \$ 86 million, covering a total area of 827 hectares and a 99-year concession period.¹⁸⁵ The development of the area as a special economic zone in this area, in addition to aiming to become a tourist destination for trade and services, also aims to eliminate the negative reputation as a drug triangle. The concession agreement was revised by the Government in 2014, which increased the investment to \$ 1,000 million and expanded to 3,000 hectares.¹⁸⁶

Accordingly, the project's investment are concerning the construction of economic infrastructures; agriculture, livestock, manufacture industries; hotel and residential area; tourism and special colorful display; golf field; educational institution and health treatment center; business and international trade area; development of real estates; banking, insurance and financial institution; post, telecommunication, internet, advertisement and printing; transportation of goods and passenger; development of tourism and entertainment zone, restaurants and bars; warehouse, duty free shop and

¹⁸⁵ Pál Nyíri and Danielle Tan Foreword by Wang Gungwu, *Chinese Encounters in Southeast Asia How People, Money, and Ideas from China Are Changing a Region*, Chapter 7: Chinese Enclaves in the Golden Triangle Borderlands, An Alternative Account of State Formation in Laos, University of Washington Press | Seattle and London, 2016, 147

¹⁸⁶ Investment Promotion Department, Ministry of Planning and Investment, Development and Management of Special Economic Zones in the Lao PDR, 2016, 147.

duty free area. Here, the casino was not part of the investment project.¹⁸⁷ However, the SEZs in Laos, and particularly in the Golden Triangle, developed well in terms of the supporting infrastructure, such as communications systems and river embankments, and also in terms of providing livelihoods to local people.

The GTSEZ distributes the special tax rate and revenue based on sectors, activities, size of investment, the operating tax rate of turnover or value added tax at a rate not exceeding 10% excise tax at a rate not exceeding 70%, profit tax at a rate not exceeding 20%, income tax payments at a rate not exceeding 7% operating tax rate for salaries of employees, experts and directors working within GTSEZ as stated in the laws and regulations.¹⁸⁸

In terms of turning land into capital, province development through foreign direct investment, and attracting foreigner funds, the GTSEZ follows the Lao Government Policy. Furthermore, in the case of the GTSEZ, casino capitalism is the zone's primary source of investment.¹⁸⁹ Even though the GTSEZ was advertised as a development zone, the primary source of revenue for the state and municipal governments is the casino. However, in terms of morality and the influence on local people in terms of access to gambling in casinos, there is a debate and a widespread issue of discussion in Lao PDR.¹⁹⁰

Furthermore, the Asian Development Bank observed at the outset of SEZ operations that the government of Laos faces five challenges in terms of SEZ management, including a lack of a national road map, a hazy division of management power between central and local authorities, a weak legal framework, a lack of qualified officials for management, and a lack of information generation for regional and international investors.¹⁹¹

Until recently, the condition of SEZ's challenge has remained uncertain. According to a report by the State Controlled Media, an investment in SEZ in Lao PDR, including

¹⁸⁷ Ibid, P.63

¹⁸⁸ Decree on the Organization and Operation of the Golden Triangle Special Economic Zone, Tonpheung District, Bokeo Province, Lao PDR, 2010, Article 9.

¹⁸⁹ Pinkaew Laungaramsri, Casino Capitalism, Chinese Special Economic Zone and Commodifying Sovereignty in Laos, 2016:45.

¹⁹⁰ Ibid.

¹⁹¹ Asian Development Bank, Lao People's Democratic Republic: Building Lao PDR's Capacity to Develop Special Economic Zones, 2008:2.

GTSEZ, is still debatable, citing an interview with the Director-General of the Special Economic Zone Promotion and Management Office, under the Ministry of Planning and Investment, who stated that from 2021 to 2025, the SEZ nationwide will require more than 700 companies to be invested. From 2021 to 2025, the government expects that the SEZ in Laos would generate around 130,000 employment, 1.217 billion Kip in revenue, and USD 2.626 million in exports of items manufactured in the SEZ. At the same time, the report stated that from 2021 to 2025, several SEZs, primarily GTSEZ and Boten Beautiful Land SEZ, will have to re-evaluate their concession agreements. While the administration of the SEZ must improve in terms of service in order to be professional, the management board must approve investment activities swiftly and efficiently.¹⁹²

On the other hand, the status of drug trafficking in the Golden Triangle has changed dramatically in recent years. The effect of drugs trafficking has decreased, but the other business as an all-in-one firm has grown in this area. Drug trafficking is not as simple as it once was. The Lao government and neighboring countries have enacted tougher drug policies and elevated the drug problem to the level of a National Agenda beginning in August 2021.¹⁹³ In the Lao People's Democratic Republic, anyone who produces, trades, distributes, transports, possesses, or imports, exports, or transports heroin, morphine, or cocaine in excess of 500 grams, as well as three kilograms or more of amphetamines, ice psychotropic substances, or ten kilograms of chemicals to produce drugs, faces the death penalty.¹⁹⁴

Nonetheless, the Golden Triangle seems to be developing an image of commerce, but various crimes, namely wildlife trading and drug-related crimes obscure this view. For this reason, the Lao government has policy to control and prevent this problem and it also tries to cooperate with neighboring countries, ASEAN and related international Organizations in order to deal with these issues. The next section will demonstrate the policy of the Government as well as international communities for the drug control and prevention.

¹⁹² Pasaxon Newspaper, Laos Seeks More Than 700 Companies to Invest in SEZs Over Five Years, publish December 14, 2021.

¹⁹³ National Agenda on the Drug Problem, 2021.

¹⁹⁴ Criminal Code, 2017

3.3 Lao Government Policy and International Cooperation on Drug Control and Prevention

Illicit drugs remain a hazard to society, especially in underdeveloped nations like Laos. In addition, drug abuse continues to be a problem in a significant part of the world. According to UNODC statistics, almost 200 million individuals used cocaine in 2019, accounting for about 4% of the global population. In addition, the same survey found that nearly 2 million people, or 1.2 percent of the world population, used opioids for non-medical purposes. While the UNODC helps and advises regional and local governments on drug-related matters, it can only give limited technical support while collecting data. Regional and local players must lead in regulating and stopping the trade.

As a result, the following section discusses the three topics: First, the study examines Laos' drug-control and preventive strategies. Second, the section describes the national drug control master plan, which is the government's approach for dealing with drug-related difficulties and obstacles, following the National Agenda on Drug Problem Resolving. Third, the dissertation highlights the international drug-trafficking cooperation, including the United Nations Office on Drugs and Crime (UNODC) and other relevant international agencies.

3.3.1 Lao Policy and International Cooperation on the Drug Control and Prevention

3.3.1.1 National Drug Control and Prevention

Between 1994 and 2020, the government introduced numerous programs in order to deal with the control and prevention of drugs, including the specific program to address with the drug issues.¹⁹⁵ While engaging in the prevention of drug trafficking, the government needed stronger strategies to deal with the trade, control the borders, cooperate with other countries, and educate the public. This section describes and compares the two governmental plans introduced between 2009 and 2016.

¹⁹⁵ (1). 1994-2000: National Drug Control Programme: (gradual and balanced approach to drug control with an emphasis on Alternative Development); (2). 2000-2006: The Balanced Approach to Opium Elimination (alternative development, demand reduction & law enforcement); (3). 2006-2009: National Programme Strategy for the Post-Opium Scenario and The Action Plan targeting 1,100 poorest priority villages: (Alternative development, demand reduction, civic awareness & law enforcement linked to 6th National Socio-economic Development Plan as a poverty reduction focused programme); (4). 2009-2013: National Drug Control Master Plan (comprehensive) The National Drug Control Master Plan provides policy direction for the National Steering Committee to Combat Drugs which was appointed by the President of the Lao PDR in October 2001.

In 2009, the government launched the National Drug Control Master Plan to address regional concerns about drug trafficking. The goal of this policy was to combat the rise and spread of illicit drug trafficking, production abuse, and other cross-border criminal activities. The Lao government then passed the Narcotic Law on December 25, 2007. In terms of drug mitigation, this Law stipulates the tasks and responsibility of several sectors, including governmental institutions, society, families, and people. As a result, the National Commission for Drug Control and Supervision's duty under expanded this law to include directing the implementation of the Master Plan.¹⁹⁶

The government of Lao PDR prioritizes the fight against trafficking and drug use and instructed line sectors, local administration, and general public to focus on successful implement of national legislative strategies against drug such as the *Criminal Law*, the *Law on Narcotics and the National Drug Control Master Plan*. The government introduced several programs and projects to deal with drug control and prevention through the *National Drug Control Master Plan 2009-2015* and the *National Drug Master Plan 2016-2020*. The goals of these plans were to strengthen civic awareness, related law, law enforcement, the effectiveness of alternative development, as well as the improvement of the Lao Commission on Drug Control (LCDC) and other support programs.

Notably, the current National Drug Control Master Plan was set up with a vision of striving to create a society of basically drug free by the year 2030. The aim was to curb and control drugs, as well as address issues related to unlawful plantation of opium poppy, cannabis, and other types of psychotropic plants. Meanwhile, National Drug Control Master Plan has promoted the education institutions, state and private enterprise and service until in term of drug free activities to ensure of the reducing of drug addicts and drug crimes.¹⁹⁷

¹⁹⁶ Ibid, 3.

¹⁹⁷ Illicit Drug Control (IDC SWG), 2016.

Table 3: Comparative National Drug Control Master Plan

No	2009-2015 Master Plan (9 Pillars)	2016-2020 Master Plan (sections)
1	Trend analysis and Risk Assessment	Expanding the evidence base for policy making
2	Alternative development and poverty reduction	Promoting integrated alternative development
3	Drug demand reduction and HIV prevention	Responding to drug use drug and reducing harm associated drug use
4	Civic awareness and community mobilization	Preventing drug use before it begins
5	Law enforcement	Using Law enforcement strategically
6	Criminal justice and the rule of Law	Effective decriminalization of drug use and smarter sanctions
7	Chemical precursor control and forensics capacity	Regulating precursors
8	International Cooperation	Strengthening international and regional cooperation
9	Institutional capacity building	Development capacity for drug control

Source: National Drug Control Master Plan (2016-2020)

As presented in the table above, the National Drug Control Master Plan 2016-2020 set nine programs for dealing the drug issue in Lao PDR, which included program for promulgating and improving legal instrument concerning narcotic problems; program on data/information collection and analysis, program concerning education/training and dissemination of information on the law and adverse consequence for drug abuse, program concerning treatment and vocation training for drug addicts, program concerning alternative development replacing opium poppy and cannabis plantation, Law enforcement program, program concerning precursor control, analyzing and testing drug use, international cooperation program and program for streamlining the

organizational machinery of the National Commission for Drug Control and Supervision at central and local level.¹⁹⁸

In comparison to the previous master plans, the new *National Drug Control Master Plan* has gone forward with more clearly defined initiatives for law enforcement and regional and international drug cooperation. Furthermore, the UNODC has played an important role in assisting with the operation of these initiatives. Nonetheless, the government of Lao PDR, through the National Commission on Drug Control and Supervision, has always said unequivocally that Lao PDR, in collaboration with ASEAN, will strive to create a drug-free region in the future.

3.3.1.2 Challenges with the National Drug Control Master Plan

In order to deal with the drug issues, the government of Lao PDR promulgated two plans entitled the *National Drug Control Master Plan* in 2009 and 2016. While the first plan attempted to address the drug problem, it could not overcome numerous challenges. First, the number of people addicted to various types of drugs in Laos was higher than the neighboring countries.¹⁹⁹ Second, the amount of poppy cultivation continued to increase 15-20% annually. Third, the number of young people using methamphetamine rose quickly. Fourth, the volume of narcotics and precursory-chemical substance for producing illicit drugs transported through the country went up significantly. Fifth, the application of legal measures against wrongdoers in some area was not rigorous enough and arrests targeted mainly small-time criminals. Sixth, the task of stopping drug trafficking along the borders has not been good enough to satisfy its neighbors.²⁰⁰

In the first plan (2009-2015), the government passed several laws in an attempt to deal with the growing problem such as the *Law on Narcotics* and the *Law on Chemical Management*. The National Assembly of Lao PDR put a great effort to work closely with concerned authorities to support and monitor the implementation of the National Master Plan. In 2014, the National Assembly of Lao PDR amended the *Law on Narcotics* and amended Article 146 on drugs under the *Criminal Law* to strengthen legal instruments against drug-related crimes and put a more serious punishment to offenders.

¹⁹⁸ Ibid.

¹⁹⁹ UNODC, “World Drug Report 2021,” <https://www.unodc.org/res/wdr2021/field-/WDR21_Booklet_1.pdf>, last accessed June 22, 2021.

²⁰⁰ National Drug Master Plan (2016-2020), 5-6

However, the first plan did not provide enough clarification or procedure to the agencies involved in controlling and preventing the usage and trade of drugs.

The second plan (2016-2020) included drafts to the criminal code attempting to deal with the ineffectiveness in the previous laws. This latter plan was concerned with the formulation and improvement of legal instruments that could help the National Commission for Drug Control as an implementing agency.²⁰¹ This plan also endeavored to provide facility that would help drug addicts with treatment and vocational training. Furthermore, a drug analysis and testing center was to be established and the Border Liaison Offices were given more resources.

With this new plan, the National Commission for Drug Control would play a key role in coordinating with line sectors in a manner of monitoring the implementation of legal instrument on drug issues. At the same time, the plan charged this commission with identifying the weak points and loopholes in the laws with the aim to propose prompt improvement of legal instrument. In addition, the plan gave the National Commission for Drug Control responsibility to publicize and disseminate the legal instrument throughout the society.

The 2016 Master Plan included several objectives. This plan focused on the coordination of drug control operations between those sectors concerned at the central and local levels. Previously, these different levels had not synchronized their work, and they acted independently from each other. Another objective included replacing opium poppy and cannabis plantation with other alternative crops and other opportunities to a secure and sustainable way to make a living. Finally, the provided drug addicts' avenues to treatment and employment opportunities.²⁰²

3.3.1.3 National Agenda on Resolution of Drug Problem

The drug problem in Lao PDR is rampant in both urban and rural areas, reaching people of all genders and ages, including students, traffickers and other groups in society. According to preliminary data, the current drug addicts in Lao PDR make up 0.94

²⁰¹ Ibid.

²⁰² National Drug Control National Master Plan (2016-2020), 13.

percent of the population.²⁰³ Drugs affect the health and lives of the younger generation and suppress economic and social development. Although the Government of Lao PDR has focused on addressing the drug problem through a number of measures, the problem continues to be severe and widespread. Therefore, the government considers solving the drug problem as a priority, with the aim of solving the problem in 2021-2023.²⁰⁴

In 2021, the Lao government introduced a number of initiatives addressing drug concerns. For instance, the party issued the *Lao People's Revolutionary Party's Resolution on Improving the Case Procedure Based on Justice Proceedings*²⁰⁵ and the *Order on Increasing the Leadership of the Party at Each Level to Prevent and Solve the Drug Problem*.²⁰⁶ Thereafter, on 18 August 2021, the National Assembly of the Lao PDR adopted the *National Agenda on Resolution of Drug Problem* which established three basic principles: decisiveness, transparency, and professionalism. Also, the government identified six focal points: 1) raise public awareness of the dangers of drugs; 2) while also disseminating the party and state's guidelines and policies; 3) formulate and amend laws and regulations concerning narcotic drugs; 4) improve organizational structure and upgrade the capability of law enforcement agencies; 5) increase effectiveness of implementation management and supervision; and 6) improve capability in identifying solutions to the drug issue and increase international cooperation.²⁰⁷

At the same time, the *National Agenda on Resolution of Drug Problem* offered guidance to the Lao government in dealing with the narcotics problem during 2021-2023. To begin with dealing with narcotics should start with prevention and decisive punishment. Government employees, in particular, should face harsher penalties than ordinary individuals if they are involved in drug-related offenses. Furthermore, the legislation should draft and revise subordinate rules as soon as possible to ensure agenda enforcement. Lastly, law enforcement should be conducted in a stringent way,

²⁰³ National Agenda on Resolution of Drug Problem (2021-2023), Ministry of National Security, Vientiane, 27 August 2021, 2

²⁰⁴ Ibid

²⁰⁵ Resolution of the Party on Improving the Case Procedure Based on the Justice Proceeding, No.112, dated 2 June 2020

²⁰⁶ Order on Increasing the Leadership of the Party at Each Level to Prevent and Solve the Drug Problem, No.2, dated 26 July 2021

²⁰⁷ National Assembly of Lao PDR, Solution of the 1st session of the 9th legislature of the NA on Approval of the National Agenda on Narcotic Solving, (NA, 04/NA, dated 10 August 2021), 2.

focusing on investigation, court decisions, and court decision enforcement, and these criminal procedures should be transparent and in accordance with the rule of law.²⁰⁸

The Party Central Committee's guidelines on improving mechanisms in consistency with the *National Agenda on Resolution of Drug Problem* noted, “The policies that inhibit drug prevention and treatment must all be revised, notably the standard of death punishment.”²⁰⁹ In some situations, it is not acceptable to commute or forgive the death sentence; on the other hand, it is not appropriate to punish the death penalty in some cases.²¹⁰

Following the promulgation of the National Agenda on Solving Narcotic Issues in August 2021, the state recorded 1,106 narcotic cases with 1,562 accused people, including 42 foreigners, apprehended. As a result, officials confiscated 100,586,361 tablets (equivalent to 10.158 kg) of methamphetamine as well as 1,593 kg of ice, 10 kg of heroin, and 3,036 kg of marijuana.²¹¹

3.3.2 International Cooperation against Drug Trafficking

Aside from domestic policy, the Lao People's Democratic Republic views international cooperation against drug trafficking to be a critical issue as highlighted in a number of government initiatives, including the Master Plan on Drug Prevention and Control. The Lao PDR is a party to three international conventions on drugs: the *Convention on the Elimination of Narcotic Drugs in 1961*, the *Convention on Narcotic Drugs in 1971*, the *United Nations Convention against Trafficking in Drugs and the Narcotic Drugs* in 1988, and has signed the MOU with 12 countries on drugs control's cooperation.²¹² The government of Laos signed the *Mekong Memorandum of Understanding (MOU) on Drug Control* which brings together six countries in East and Southeast Asia (Cambodia, China, Lao PDR, Myanmar, Thailand and Viet Nam) to

²⁰⁸ Ibid, 3.

²⁰⁹ Order of Central Committee of the Lao People's Revolutionary Party, No. 02, dated 26 June 2021, on increasing the Party's guidance at each level to prevent and solve the drug problem.

²¹⁰ Ibid

²¹¹ Public Security Newspaper, only 3 months, security force can solve 1.106 narcotic cases, 7 Dec 2021.

²¹² National Agenda on Resolution of Drug Problem (2021-2023), Ministry of National Security, Vientiane, 27 August 2021, 2

address the threat of illicit drug production, trafficking and use.²¹³ For over 25 years, these governments have collaborated on illicit drug challenges with the backing of the international community and the UNODC.

The Cross-border cooperation, mutual legal assistance and supply reduction are major objectives in achieving the goal of drug free ASEAN. The UNODC has helped facilitate cross border cooperation via the Border Liaison Office (BLO) mechanism. As explained in the 2008 ASEAN-UNODC mid-term report the “BLOs bring together Law enforcement unit from both side of a land and water border and put in place protocols for joint operation”²¹⁴ As of February 2009, 70 BLOs has been established along the border of Burma, Cambodia, Lao PDR, Thailand, Vietnam and China.⁴⁵ According to UNODC, it is in the context of the BLO program that the Lao PDR and Thailand undertook the first joint patrol on the Mekong River in 2003.

According to a December 2018 United Nations report, opium production in the Golden Triangle has tripled since 2006, with the region's illegal drug trade worth \$16.3 billion. In 2014, according to the UN Office on Drugs and Crime's Southeast Asia opium survey, the region produced 762 tons of opium, converted into approximately 76 tons of heroin. The Golden Triangle was previously the largest producer of poppies; however, unit education efforts in the late 1990s drove cultivation to a halt. The production has increased once again as a result of improved transportation infrastructure and an increasing amount of heroin trade.

Drug trafficking is only one aspect of a drug economy and while the goals of a drug free world or a drug free ASEAN will be highest milestone, effort can and should be made to minimize the harm cause by illegal drug production, trafficking, and consumption. The difficulty of coping with drug trafficking result not only from poverty-which make drug production and trafficking even more attractive economically- but also corruption. Indeed, a lack of resources and fragile domestic institutions undermine the effort carried against both drug production and drug trafficking.²¹⁵

²¹³ UNODC. Regional Office for Southeast Asia and the Pacific <<https://www.unodc.org/southeastasiaandpacific/en/what-we-do/toc/mou.html>>, accessed on 6 February 2022.

²¹⁴ UNODC, World Drug Report 2021, <https://www.unodc.org/res/wdr2021/field-/WDR21_Booklet_1.pdf>, last accessed June 22, 2021.

²¹⁵ UNODC-ASEAN, 2008, 77.

The Safe Mekong Operation Project which covers Laos, Cambodia, China, Myanmar, Thailand and Vietnam, also aims at combatting drug crimes.²¹⁶ The implementation of the Safe Mekong operation is associated with the ASEAN cooperation plan to Tackle Illicit Drug production and trafficking in the Golden Triangle (2017-2019) implemented also via ASEAN Member States.²¹⁷

To summarize, the Laotian government is working hard to address drug concerns through the implementation of laws, strategies, and institutional mechanisms, as well as National Agenda on Resolving the Drug Problem (2021-2023). However, it appears that the best attempts, namely alternative development, to provide opportunities and access to development for local people in both urban and rural areas are limited. An alternate development for avoiding drug-related activities is contentious and debated between the Lao government the UNODC. This is because, for example, the UNODC announced in 2019 that Lao PDR ha a vast area of opium crop and a high number of drug users. Moreover, alternative development programs demand a large budget, which the Lao government may not be able to finance.

Conclusion

The Golden Triangle provides the circumstances for the emergence of drug trafficking routes, owing primarily to its location in the highlands of the Indochina peninsula's fan-shaped topography. The Golden Triangle covers 367,000 square miles in Southeast Asia and has generated a substantial share of the world's opium since the turn of the century. This region is concentrated on the convergence of the boundaries that divide Laos, Myanmar, and Thailand.

Because of its rugged topography and remoteness from major metropolitan centers, the Golden Triangle is a suitable site for illicit poppy growing and transnational opium smuggling. During British and French colonial domination, the Golden Triangle became the main opium growing and production location. In lower Myanmar, on the other hand, the British monopoly was successful in securing non-commercial opium production by the 1940s. The Golden Triangle was the world's largest producer of

²¹⁶ Workshop on Formulation of the 5-Year Master Plan (2019-2023) under the Safe Mekong Operation Project among 6 Countries (Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam) on 9-10 April 2018 at the Duang Tawan Hotel, Chiang Mai.

²¹⁷ Ibid.

opium and heroin until the end of the twentieth century. Myanmar is the highest producing country. Until the early 1990s, Thailand was the primary heroin trafficking route in Southeast Asia. A variety of reasons, however, have led to the reorientation of drug trafficking routes within Southeast Asia and the emergence of new routes to other parts of the continent. Thailand is the country with the highest concentration of drug traffickers. However, since a few years ago, the networks have broadened, and now include trade routes from China, Laos, Vietnam, and Malaysia. The international cooperation framework against drug trafficking, which pertains to cross-border cooperation, mutual legal assistance, and supply reduction are the major objectives in achieving the goal of a drug-free ASEAN.

The UNODC has helped facilitate cross border cooperation via the Border Liaison Offices (BLO) mechanism. These BLOs bring together law enforcement units from both sides of a land or water border and put in place protocols for joint operations. In 2009, The UN established 70 BLOs along the border of Burma, Cambodia, Lao PDR, Thailand, Vietnam and China. Drug trafficking is only one aspect of the drug economy and while the goals of a drug free world or a drug-free ASEAN will never be reached, efforts can and should be made to minimize the harm caused by illegal drug production, trafficking, and consumption. Within the context where those countries tend to impose harsh punishment against drug-related offences however, the enhancement of regional cooperation does not necessarily contribute to the ultimate abolition of the death penalty against drug crimes.

Even outside of the context of regional cooperation, the urge to impose harsh punishment remains a major worry. The existing connection with China, as well as the construction of special economic zones in areas with significant Chinese investment, raises the possibility of extraterritorial application and execution of Chinese law. Offenders in China will most likely face execution. In such conditions, it appears that Laotian authorities will find it difficult to relax penalty for drug-related offenses. This rationale acts as a kind of pressure for harsh punishment.²¹⁸

Countries neighboring Laos takes different approaches to punishing convicted drug criminals. China, Thailand and Vietnam apply the death penalty in accordance to

²¹⁸ Further discussion is available in, Jonas Parello-Plesner & Mathieu Duchâtel (2014) Murder on the Mekong: The long arm of Chinese law, Adelphi Series, 91-106.

their national laws. Cambodia has abolished the death penalty, while Myanmar is similar to Laos in that a convicted criminal may receive the death penalty but it is not carried out. There is little question that the drug policies and enforcement in these nations have had a direct influence on the Lao PDR. As a result, the next chapter will examine the present state of affairs and geopolitical background of drug-related crime in these nations.

Chapter IV: Current Geopolitical Context of Drug-related Crimes in the Neighboring Countries of the Lao PDR

Introduction

The current geopolitical contexts in the neighboring countries of the Lao PDR are key elements for Lao laws punishing drug-related crimes. The Lao PDR shares borders with five countries, namely, Cambodia, China, Myanmar, Thailand, and Vietnam which are ASEAN member-states, except China. Three of them Cambodia, Thailand, and Vietnam have already become state parties of the ICCPR. While Myanmar is an ASEAN member-state, it does not participate in the ICCPR like China. Regarding the laws punishing drug-related crimes, most of the neighboring countries are applying the death penalty for drug-related crimes, except Cambodia.

In the fight against the drug problem in the region, the death penalty is important because the UNODC recognizes this region as the main source of narcotics production and trafficking.²¹⁹ In 2019, Myanmar is the major source of methamphetamine and related precursor chemical substances that spread to border countries like Lao PDR, Thailand, and China.²²⁰

Among the neighboring countries of the Lao PDR, Vietnam is the most influential in improving the Lao PDR's laws and judicial system. But Vietnam actually carries out executions unlike Laos. China, a strategic ally of the Lao PDR, has imposed the death penalty on drug offenses, which is at the world's forefront of execution.²²¹ Thailand, on the other hand, has a special similarity with its spoken language and traditional customs, but with administrative differences.

Drugs are still a threat to the health and security of countries in the region. The fight against drugs is therefore a shared obligation of nations around the world. Lao PDR and neighboring countries, including ASEAN, are cooperating to address this issue, as already discussed in Chapter 3. From 2010 to 2015, the members of the Greater Mekong Subregion (GMS), including China, Myanmar, Lao PDR, Thailand, Cambodia, and Vietnam established a program called the *Partnership Against*

²¹⁹UNODC, Southeast Asia and Pacific, <<https://www.unodc.org/southeastasiaan-dpacific/en/what-we-do/toc/drugs-and-precursors.html>>, accessed January 29, 2021.

²²⁰ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth, and Impact*, 30.

²²¹ Amnesty International 2019: *Death Sentences and Executions 2018*, 21.

Transnational-crimes Through Regional Organized Law enforcement (PATROL) to deal with drug trafficking, illegal movement of people and environment crimes.²²² For its part, the UNODC has helped for facilitating cross-border cooperation via the Border Liaison Office (BLO) mechanism.²²³ The other challenge of cooperation related to the implementation of the “Safe Mekong Operation Project” with Laos, Cambodia, China, Myanmar, Thailand and Vietnam, which aims to address drug issues in respective countries.²²⁴ Additionally, the implementation of the Safe Mekong operation is associated with the ASEAN cooperation plan to Tackle Illicit Drug production and trafficking in the Golden Triangle (2017-2019).²²⁵

This chapter analyzes the laws governing the death penalty for drug-related crimes as well as the government's policies addressing drug-related offenses. Here, the chapter illustrates comparative legal diagrams of punishment structures and alternative deterrent strategies in countries that impose the death-penalty, those that are de-facto abolitionist, and those that have abolished it.

4.1 Situations in the Countries Where Execution is Active for Drug Crimes; China and Vietnam

China and Vietnam and are neighboring countries with administrative systems and way of life which greatly influence Lao PDR. These countries have borders along the Mekong River. In particular, China and Vietnam are strategic friends of Laos with a similar system of governance under the leadership of the Marxist-Leninist Party.²²⁶ Today, China, and then Vietnam have become the top investors in Lao PDR.²²⁷

²²² UNODC, Partnership Against Transnational Crime through Regional Organized Law Enforcement, <<https://www.unodc.org/southeastasiaandpacific/en/patrol.html>>, accessed January 29, 2021.

²²³ UNODC, World Drug Report 2021, <https://www.unodc.org/res/wdr2021/field-/WDR21_Booklet_1.pdf>, last accessed June 22, 2021.

²²⁴ Workshop on Formulation of the 5-Year Master Plan (2019-2023) under the Safe Mekong Operation Project among 6 Countries (Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam) on 9-10 April 2018 at the Duang Tawan Hotel, Chiang Mai.

²²⁵ Ibid.

²²⁶ Documents of XI Lao People Revolutionary Party Congress, State Printing House, 25 June 2021, 81

²²⁷ ASEAN-China Centre, China and Laos Pledge to Deepen Trade, Diplomatic Ties, <<https://www.asean-china-center.org/english/2021-09/8267.html>>, accessed February 14, 2022: As the biggest investor, in 2021, China continues to engage in 21 projects in Laos, for a total investment of \$2.5 billion US Dollars. The mining, services, electrical, agriculture, and infrastructure industries all have projects. According to data from the Lao Ministry of Planning and Investment, China ranked top with 6,608 million US dollars in 1988-2017, followed by Thailand with 4,497 million US dollars and Vietnam with 3,483 million US dollars.

However, these countries have special and specific policies in dealing with drugs. China and Vietnam have strict drug laws and a high number of death penalty executions each year, according to the Amnesty International figures.²²⁸

Due to its geopolitical features and strategic alliances that influence the drug problem, China and Vietnam are nations that employ stringent measures to combat the drug problem in the region. The following sections will provide an in-depth study of drug control policies in each country, and in particular the death penalty on drugs.

4.1.1 China

China, the world's most populous country, shares a 505-kilometer border with Laos in its Northern area. Due to its geographical proximity to Laos, the transit and trade of drugs from the Golden Triangle to China and from China to the territory via another channel, the Mekong, is very convenient. In addition, Chinese nationals have invested in the development of the special economic zone in the Lao PDR, as described in Chapter III. This section will focus on China's policy on drug control and the death penalty against drug-related crimes. However, China has not managed to stop the illegal drug trade despite executing a number of drug prisoners.

4.1.1.1 China's Drug Control Policy

Historically, China was one of the countries affected by the opium trade mainly during the period 1800s to 1930s. According to Kathryn Meyer and Terry Parssinen, "It was estimated that by 1930, 20 percent of the China population was hooked on opiates with 90 percent of such addicts (72 million) using opium and the rest (10 million) using morphine or heroin."²²⁹ Today, China has re-emerged as the center for narcotics because of certain developments that have created opportunities for such trade. The cross border transactions between and among neighboring countries in Southeast Asia, Central Asia, Afghanistan, and North Korea have increased as narcotics trade has been liberalized in remote areas bordering, for example, Myanmar and Golden Triangle in Southeast Asia.

²²⁸ Amnesty International, 21 April, 2021, Death penalty in 2020: Facts and figures,

²²⁹ Kathryn Meyer and Terry Parssinen, *Webs of Smoke* (Lanham: Rowman & Littlefield Publishers, INC: 1998), 3.

²³⁰ According to the UNODC, “Transnational organized crimes (TOC) group operating in the regional have been increasingly involved in the manufacture and trafficking of methamphetamine and other drugs in the Golden Triangle in recent years.”²³¹ Because China shares a long-border with the Golden Triangle countries, the volume of narcotics in China has increased, while users are becoming younger and these young drug abusers are also engaged in sexual activities, crimes, and prostitution, resulting in the spread of HIV/AIDs.²³²

In 2019, China implemented a special campaign to establish some guiding principle set forth in the 19th National Congress and the Second, Third and Fourth Plenary Sessions of the 19th Central Committee of the Communist Party of China (CPC) entitled *Combatting Drug Manufacture and Trafficking and Controlling Drug Precursors and Drug Use*.²³³ The purpose of this campaign was to crack down on drug manufacture in order to reduce the inflow of drug from abroad and online drug-related criminal activities, to implement education projects for the young, to promote community-based treatment and rehabilitation programs, and to mitigate the social harm caused by drugs.²³⁴

At the same time, in 2019, China intervened in 83,000 drug-related criminal cases, 113,00 drug-related suspects were arrested, 65.1 tons of drugs were seized, and 617,000 persons were tracked down drug pushing.²³⁵ China introduced two drug addiction treatment centers. The government organized the first compulsory treatment center s by, which treated 220,000 victims. A community organized the second treatment center which treated 300,000 victims. According to reports, the number of drug users, large-scale manufacturing of drugs and illegal diversion of drug precursors declined.²³⁶

The report of the Office of China National Narcotic Control Commission showed that, in 2019, there were 2.14 million drug users nationwide or 0.16% of the total

²³⁰ Niklas Swanstrom, *The New Opium War in China: New Threat, New Actors and New Implications*, in *China's War on Narcotics: Two Perspectives* by Niklas Swanstrom and Yin He (Washington, D.C.: Johns Hopkins University, 2006), 22.

²³¹ UNODC, *Synthetic Drugs in East and South-East Asia, Trend and Patterns of Amphetamine-type Stimulants and New Psychoactive Substances*, 2019, 1.

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ Office of China National Narcotics Control Commission. *Drug Situation in China* (2019), 2020, 1.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

population. The report classified users into three groups: those above 35 years old (or 51%), those 18-35 (or 48.7%), and those below 18 or (0.3%). Of the 2.14 million drug users in China, 1.18 million were methamphetamine users or 55.2%, while 807,000 were heroin users or 37.5%, and 49,000 were ketamine users or 2.3%.²³⁷ According to the World Drug Report 2019, the manufacture and trafficking of methamphetamine had a geographical shift from China to other countries in the region.²³⁸ However, drug abuse induced a large number of criminal activities such as theft, robbery, and fraud.²³⁹

The Office of China National Narcotics Control Commission also reported that the drugs seized that year come from abroad. The report also confirmed that the Golden Triangle remained as the mainstream as 27.3 tons of 33 tons of heroin, methamphetamine tablets, crystal methamphetamine, ketamine, and another major drug came from this area. Other sources of drugs were the Golden Crescent, South America, North America, and domestic drug manufacturers.²⁴⁰

Relevant to drug trafficking in 2019, there were 62,000 drug smuggling and trafficking cases throughout China via both online and offline channels. In Yunnan province, which shares a border with the Golden Triangle as the main transit point for drugs into mainland China, the government solved 6,957 drug-related cyber cases involving 2.9 tons of drugs seized with 12,000 suspects arrested. While the online channel of drug trafficking is convenient and safe, it facilitates a quick and smart service.²⁴¹

4.1.1.2 China Remains the World's Leading Executioner of the Death Penalty

Today, reports indicate that China remains the world's leading executioner of the death penalty, but the true extent of the penalty in China is unknown as the state has classified the data as secret. However, President Xi Jinping supported the effort to continue the tough anti-drug stance and the people's battle against drugs, a bid to make new progress in drug control.²⁴²

²³⁷ Ibid.

²³⁸ UNODC, World Drug Report 2019, Executive Summary, 9.

²³⁹ Office of China National Narcotics Control Commission, Drug Situation in China (2019), 2020, 3.

²⁴⁰ Ibid, 6.

²⁴¹ Ibid, 7.

²⁴² Harm Reduction International, The Death Penalty for Drug Offences: Global Overview, 2018, 24.

Under the *Criminal Law of the People's Republic of China*, 2011, there were 11 articles on smuggling, trafficking, transportation, and manufacturing of drugs. Of these, only one article provides the death penalty, which states that:

(1) Person who smuggles, traffics in, transports or manufactures opium of not less than 1,000 grams, heroin or methyl aniline of not less 50 grams, or other narcotic drugs of large quantities.

(2) Ring leaders of gangs engaged in smuggling, trafficking in, transportation or manufacturing of narcotic drug.

(3) Person who shields with arms the smuggling, trafficking in, transportation or manufacturing of narcotic drug.

(4) Person who violently resists inspection or arrest to a serious extent; or

(5) Person who is involved in organized international drug trafficking.²⁴³

Table 4: Death Penalty for Smuggles, Traffics, Transport or Manufactures Narcotics Drugs

Narcotic Substances	3 Years	7 Years	15 Years, Life Imprisonment or Death Penalty
Opium	<200g	>200g-<1000g	< 1000g
Heroin or methylaniline or other narcotic of large quantities	<10g	>10g-<50g	< 50 g

Source: China Criminal Code, 2011(collected by the author)

While China considers drug-related crimes as one of the main threats to the population and country's development, it has adopted the United Nations Safeguards guaranteeing the protection of the rights of those facing the death penalty. According to Yingxi Bi, China promulgated the policy of "less kills, cautious kills" in order to avoid the mistake of applying the death penalty. Moreover, the Supreme Court of China is open for public scrutiny in order to ensure fairness when the death penalty is applied.²⁴⁴

²⁴³ Criminal Law of the People's Republic of China, art. 347 (2011).

²⁴⁴ Yingxi Bi, On the Death Penalty for Drug-Related Crime in China, *Human Rights and Drugs*, vol 2, no. I, 2012:37 At 47.

Nonetheless, the penalty for possessing narcotic substances differs from the penalty for smuggling, transporting, or producing narcotic drugs. As seen in the table below:

Table 5: The Penalty for Illegal Possession of Narcotics Drugs

Narcotic Substances	Not more than 3 Years	7 Years, or Life Imprisonment
Opium	>200g-<1000g	< 1000g
Heroin or methylaniline or other narcotic of large quantities	>10g-<50g	< 50 g

Source: China Criminal Code, 2011 (collected by the author)

However, even in China, there is another trend that supports the abolition of the death penalty in all circumstances. Those who support the abolition of the death penalty for drug-related crimes argue that the death penalty cannot prevent crimes.²⁴⁵ *Yingxi Bi*, for example, also urged China to observe international and domestic standards for the protection of the rights of people facing death penalty.²⁴⁶

In sum, China's drug policy as a neighboring country of Lao PDR demonstrates the strictness of law enforcement as well as the country with the largest number of death sentence and executions in the world. However, the death penalty has not reduced drug-related crimes; on the contrary, drug criminals and the death penalty remain high.

4.1.2. Vietnam

Vietnam is a strategic friend of Lao PDR, with borders of 2,069 kilometers to the east. These two countries have a history of fighting for independence against the same enemy and have the same political system administration structure and similar sets of laws. Additionally, Vietnam has had an influence s in the Lao legal system, especially in criminal law. This chapter will present an in-depth study on the policy on the suppression of the drug problem by setting the maximum penalty of death.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

4.1.2.1 Vietnam Drug Control Policy

Aside from law enforcement, Vietnam offers many approaches to deal with drug-related issues, which are enshrined in the Constitution of the Socialist Republic of Vietnam, the Drug Law of 2000, Decree 56/CP of the Government to implement the 2000 Drug Law, the 2008 Amended Drug Law, and the 2009 Amended Criminal Code.²⁴⁷

The Government of Vietnam has paid attention to the eradication of opium cultivation, and set severe punishment for opium and drug users and traders. For instance, possession of more than 600 grams of heroin or 20 kilograms of opium is punishable by death. The 1985, 1999 2009 and 2015 versions of the criminal code all provide for the death penalty for drug-related crimes.

In addition to the punishment, the main cities of Vietnam intensified the campaign for public awareness on the negative impacts of drug abuse in. At the same time, the government of Vietnam invested greater than 500 billion Dongs (\$2.55 million) to upgrade and build the rehabilitation centers in Ho Chi Minh City for the treatment of 23,000 addicts.²⁴⁸

The Ministry of Public Security of Vietnam has reported that between 2001 and 2007, there were 76,443 drug cases and the arrest of 119,286 people. Three types of narcotics were seized, namely, 1.28 tons of heroin, 1.77 tons of opium, and 800,000 drug tablets (mostly methamphetamine).²⁴⁹

Vietnam has also signed anti-drug trafficking agreement and cooperation with Lao PDR²⁵⁰ and United States of America. In its cooperation with the US, Vietnam received some skills training and funds from U.S Drug Enforcement Administration (DEA). About 80 police, customs, army and anti-narcotics personnel in Ho Chi Minh City joined DEA organized exercises on drug raid drills, handcuffing practice and arrest scenarios.

²⁴⁷ Thu Vuong, Robert Ali, Simon Baldwin, Stephen Mills, Drug Policy in Vietnam, A decade of change? (International Journal of Drug Policy) 2011, 2.

²⁴⁸ Deutsche Presse Agentur, February 22, 2008.

²⁴⁹ Ibid.

²⁵⁰ <<https://en.vietnamplus.vn/vietnam-laos-forge-cooperation-in-drug-combat/205695.vnp>>. Vietnam, Laos forge cooperation in drug combat, 2 August 2021, last access, 4 September 2021.

In April 2007, the Associated Press reported that more than 600 suspected drug users were arrested during nightclub raids in downtown Hanoi which are the common meeting points for drug trafficking and prostitution.²⁵¹

4.1.2.2 Death Penalty for Drug-Related Crimes in Vietnam

Under the Criminal Code of Vietnam 2015, paragraph 1 of Article 40, courts can impose the death penalty on criminal offenders who commit extremely serious crimes such as infringement on national security,²⁵² human life²⁵³ including murder,²⁵⁴ drug-related crimes, corruption, and other serious crimes. However, paragraph 5 of Article 91 states that death the judges cannot impose the penalty upon a juvenile offender under 18 years old.

In the case of drug-related crimes, only Article 250 of the same Criminal Code provides death penalty on illegal transport of narcotic substances, while another provision states that the offense committed in any of the following cases shall carry a penalty of 20 years imprisonment, life imprisonment or death:

- a) The offense involves a quantity of 05 kg of poppy resin, cannabis resin, or coca glue.
- b) The offense involves a quantity of 100g of heroin, cocaine, methamphetamine, amphetamine, or MDMA or XLR-11.
- c) The offense involves a quantity of 75kg of cannabis leaves, roots, branches, flowers, fruits, or coca leaves.
- d) The offense involves a quantity of 600kg of dried opium poppy fruits.
- e) The offense involves a quantity of 150kg of fresh opium poppy fruits.
- f) The offense involves a quantity of 300g of other solid narcotic substances.
- g) The offense involves a quantity of 750ml of other liquid narcotic substances.²⁵⁵

²⁵¹ Associated Press, April 28, 2007.

²⁵² Criminal Code of Vietnam 2015, Article 108 High treason, Article 109. Activities against the people's government, Article 110. Espionage.

²⁵³ Article 113. Terrorism to oppose the people's government

²⁵⁴ Article 123. Murder

²⁵⁵ Criminal Code of Vietnam 2015, Article 250

According to Hai Thanh Luong, the courts can apply the death penalty against drug-related crimes on two core conditions. First, the offender commits serious crimes like narcotics production, unlawful stockpiling, transporting or trading. Second, the criminal process concludes that rehabilitation might not be enough for the act of the offender.²⁵⁶ Hai Thanh Luong also stated that between 1993 and 2000, there were 1,179 death penalty candidates, many of whom committed drug-related crimes. From 1996 to 2001, according to the research of Hai Thanh Luong, 22,058 drug-related crimes were committed, 288 of which resulted in the death penalty. In 2001-2010, there were 1,421 drug-related crimes.²⁵⁷

Vietnam is now 12th among countries with the greatest number of death penalty cases.²⁵⁸ However, the number of death penalty cases in Vietnam might be more than that in the official report of the state-controlled media. Some sources surmised that Vietnam is the most aggressive country in Asia in terms of the imposition of the death penalty. In addition, another study by Johnson and Zimring uncovers that between 1997 and 2002, the Vietnamese courts sentenced approximately 155 individuals to death for murder and violence resulting in death accounted for 57 percent, 33 percent for drug-related crimes and the remaining for corruption and other offenses.²⁵⁹ Moreover, in 2003, the courts handed out 103 death sentences, including 63 were drug-related crimes. In 2004, the report stated that Vietnam executed 64 people.²⁶⁰ Consequently, it is important to note that there was contradictory evidence regarding the execution of death sentences in Vietnam, which may appear conflicting. In spite of the contrasting information presented in the two studies, the author can conclude that the death penalty for drug-related crimes in Vietnam remains significant numbers.

Amnesty International reported in 2008 that during two weeks in November 2007, Vietnamese courts sentenced 35 death penalty convicts for drug-related crimes.²⁶¹

²⁵⁶ Hai Thanh Luong, "The Application of the Death Penalty for Drug-Related Crimes in Vietnam: Law, Policy and Practice," *Thailand Journal of Law and Policy*, 17(1): 19.

²⁵⁷ Ibid, 24-25.

²⁵⁸ Vietnam Committee on Human Rights, *The Death Penalty in Vietnam*, (Vietnam Committee on Human Rights), 2016, 7.

²⁵⁹ David T. Johnson and Franklin E. Zimring, *The Next Frontier National Development, Political Change and the Death Penalty in Asia* (Oxford University Press, 2009), 389.

²⁶⁰ Amnesty International, 2004, 195]

²⁶¹ Amnesty International, *The State of the World's Human Rights* (Amnesty International, February 2008), 329.

Meanwhile, in 2018 Vietnam there had been 122 death penalty sentences and executed 85 cases.²⁶² In addition, the Government of Vietnam stated that they executed 68 men between 1 October 2018 and 31 July 2019, and that the number of death sentences imposed in the first seven months of 2019 was 25% higher than in the same period in 2018.²⁶³ Amnesty International monitored reports of executions and death sentences during the year but was only able to gather reports referring to 76 new death sentences, including three imposed for murder and 73 for drug trafficking.²⁶⁴

Table 6: Vietnamese 1999 Criminal Code: Penalties for Offenses

Narcotic Substances	20 years	Life Imprisonment	Death Penalty
Opium or cannabis resin, or cocaine glue	5 kg < 10kg	10kg < 20 kg	≥ 20 kg
Heroin or cocaine	100 mg < 300 mg	300 mg < 600 mg	≥ 600 mg
Cannabis leaf, flower, and seeds	75 kg < 200 kg	200 kg < 600 kg	≥ 600 kg
Other narcotic substances solid Form	300 mg < 900 mg	900 mg < 2500 mg	≥ 2500 mg
Other narcotic substances in liquid form	750 ml < 2000 ml	2000 ml < 5000 ml	≥ 5000 ml
Precursors	≥ 1200 mg		Not imposed

Source: Vietnam Criminal Code, 1999 (collected by the author)

The main form execution in Vietnam is by lethal injection. However, the National Assembly of Vietnam would like to employ the firing squad because of the difficulty in obtaining lethal drugs and relieve the pressure of holding hundreds of death row inmate in prison.²⁶⁵

In conclusion, although Vietnam is a strategic partner of the Lao PDR with a similar political regime and legal background, Vietnam is stricter in its crackdown on drugs as

²⁶² Amnesty International, 2018, 27.

²⁶³ Amnesty International, 2019: Report to the National Assembly's Justice Committee for consideration in early September 2019

²⁶⁴ Ibid

²⁶⁵ Vu Trong Khanh and Nguyen Anh Thu, "Vietnam May Return to Firing Squads Amid Shortage of Lethal Chemicals," *The Wall Street Journal* (2013).

this nation-state annually executes many people convicted for drug-related offences. Hence, there is no positive sign of Vietnam's movement towards abolition of the death penalty for drug offences because policymakers consider this type of crime as particularly dangerous for the society.

4.2 Thailand and Myanmar's Drug Policy and the Death Penalty

4.2.1 Thailand has become on the approach of de facto abolition of the death penalty

The Kingdom of Thailand borders Lao PDR with a length of 1,835 kilometers. Despite having different political regimes, Laos and Thailand have the same language and ethnical background which make them closer to each other than any other countries.²⁶⁶ Executions have been more infrequent in Thailand in recent years. Although Thailand killed two inmates in 2009, the government expressed a strong intention (at least before to the 2014 military coup) to discontinue the use of the death penalty in practice and proceed toward legal abolition.²⁶⁷

Thailand's *Second National Human Rights Action Plan* (2009-2013) featured a declared desire to eliminate the death sentence for the first time. Furthermore, a royal pardon was issued in August 2012, stating that all convicts sentenced to death whose cases had reached a final decision would have their death sentences reduced to life imprisonment.²⁶⁸ As a result, at least 58 death row inmates had their sentences commuted.²⁶⁹ Although the death penalty has continued in Thailand, in recent years, Thailand has announced a policy to curb drug use from punishing drug users, accessing health care programs, and raising public awareness of drug problems.²⁷⁰

The last execution in Thailand took place in 2018. Since then, no execution was recorded.²⁷¹ Thailand maintains the death penalty for drug crimes and has a clear anti-drug policy through the enactment of relevant laws and regulations.

²⁶⁶ Lao Studies 1, Department of Higher Education, MOES, 2016, 100

²⁶⁷ < [https:// deathpenaltyworldwide.org/database/#/results/country?id=78](https://deathpenaltyworldwide.org/database/#/results/country?id=78)>, last accessed on 6 March 2022

²⁶⁸ Ibid

²⁶⁹ Ibid

²⁷⁰ Thailand's Country's Report to the 3rd Meeting of AIPA Advisory Council on Dangerous Drugs (AIPACODD), June 29, 2020, Hanoi, Vietnam

²⁷¹ Amnesty International, Thailand: Country 's first execution since 2009 a deplorable move, < <https://www.amnesty.org/en/latest/news/2018/06/thailand-countrys-first-execution-since-2009-a-deplorable-move/>>, accessed on 23 December 2021.

4.2.1.1 Thailand's Drug Control Policy

Thai governments had clearly set the drug control policies, the government of Thaksin Shinawatra, the Prime Minister of Thailand, from 2001-2006 was a time of serious repression of the drug problem and the declaration of “war on drugs.” The policy resulted in more than 2,000 extrajudicial killings. Thailand also tried its best in eradicate opium planting. For example, in 2017-2018, of the total 317.07 hectares of opium plantation in the northern provinces of Thailand, the government destroyed 313.17 hectares (or 98.77%).²⁷²The Royal Thailand Government set a 20 year national strategy (2018-2037) towards the security, prosperity, and sustainability of the nation which included a focus drug problem is one of the issues.²⁷³ Different government agencies and non-government groups addressed the matter in Thailand by raising awareness of the negative impacts of illegal drugs on health, community, and family.²⁷⁴

Aside from GMS cooperation, Thailand also drafted bilateral joint action plans on drug control with neighboring countries such as Myanmar, Lao PDR, and Cambodia. The joint action plan for Thailand and Myanmar took effect from 2018-2020 which aimed at evaluating the cooperation in solving the illicit drug issues along the borders of the two countries. The cooperation between Thailand and Lao PDR was conducted from 2019-2022, while Thailand and Cambodia operated the “White Village” Project which was successful in reducing drug cases by establishing checkpoints, conducting patrols, and installing warning signboards.²⁷⁵

In addition to its local efforts, Thailand also sought the cooperation with the neighboring countries in dealing with illicit drugs that threaten national security. Furthermore, Thailand, Myanmar and Lao PDR organized a Trilateral Ministerial Meeting on Drug Control Cooperation in order to discuss and together solve the drug problem situation in the Golden Triangle and Mekong Operation. At the same time, Thailand and the five Mekong countries discussed the *Sub-Regional Action Plan on*

²⁷² Opium Cultivation and Eradication Report for Thailand: 2014-2015 (Office of the Narcotics Control Board, Ministry of Justice) 2015.

²⁷³ Thailand Narcotics Control Annual Report, 2019 (Office of the Narcotics Control Board, Ministry of Justice) 2019, 13.

²⁷⁴ Ibid, 47

²⁷⁵ Thailand Narcotics Control Annual Report, 2019 (Office of the Narcotics Control Board, Ministry of Justice) 2019, 75.

Drug Control (May 2019-May 2021) under the “Mekong Agenda” that dealt with the drug issue in the Mekong Sub-Region countries.²⁷⁶

To summarize, the Thai government defined drug control policy, for which the government has produced laws and regulations, as well as international collaboration on these matters. Despite the government's efforts to abolish the death penalty, the death penalty de jure remains within the country's black letter law as a punishment for more severe drug-related crimes.

4.2.1.2 Death Penalty for Drug-Related Crimes in Thailand

In Thailand separate legislation determines the penalty for drug-related offenses rather than the penal law. In this regard, the *Narcotics Act 2522* (1979) and the *Psychotropic Substances Act 2518* (1979) are the two most essential acts for practical reasons.²⁷⁷ As a result, the *Narcotics Act* includes three narcotic categories of drugs. The first category is made up of heroin, amphetamines, methamphetamines, MDMA (ecstasy), and LSD. The second category includes cocaine, codeine, methadone, and morphine. The third category includes cannabis, hallucinogenic mushrooms, and kratom Plant.²⁷⁸ In this regard, for production, importation, or exportation of a drug in the first category, the maximum penalty is life imprisonment and a fine between 1,000,000 and 5,000,000 Baht, unless the drug is being disposed of, in which case the death penalty is applicable.²⁷⁹

In 2003, Thailand, under Prime Minister Thaksin, launched a zero-tolerance on the war on drugs in order to respond to the increasing *yaa baa* and, to a lesser extent, heroin consumption.²⁸⁰ During the implementation of this program, however, 2,819 people were killed but the police reasoned that most killings were the result of drug dealers silencing potential informants or from dealers' battles with the police.²⁸¹ For Prime

²⁷⁶ Ibid, 67.

²⁷⁷ Siam Legal, Criminal Drug Offences in Thailand, <<https://www.siam-legal.com/litigation/criminal-defence-drug-offences-in-thailand.php>>, last accessed on February, 2022

²⁷⁸ Ibid

²⁷⁹ Ibid

²⁸⁰ Human Rights Watch, Thailand: Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights, 8 July 2004, no. 8 (c), <<http://www.refworld.org/docid/412efec42.html>>, last accessed on August 26, 2021.

²⁸¹ Human Rights Watch and Thai AIDS Treatment Action Group, Deadly Denial; Human Rights Watch, Thailand: Convictions of Police in Drug Campaign Abuse a ‘First Step, December 14, 2009,

Minister Thaksin, the killing of drug traffickers was acceptable because they brought ruthlessness to the young people.²⁸² Following the Prime Minister's view, the Interior Minister *Chalerm Yubamrung* ordered the crackdowns even if thousands of people could be killed.²⁸³ According to *Johnson and Zimring*, the government under PM Thaksin carried out 26 judicial executions and more than 4,000 persons were killed extra-judicially, all drug-related.²⁸⁴ The death row statistics of Thailand increased three times during the first part of Thaksin's rule.²⁸⁵

Illicit drug use in Thailand was alarming because one-third of drug users were 15-24 years old. In 2019, there were 385,771 drug offenders: 179,846 consumption offenders, 109,882 possession offenders, and 95,207 major offenders.²⁸⁶ As of February 2021, Thailand has 256 death row inmates, including 132 males and 31 women for drug-related crimes.²⁸⁷ Thailand executed one death row inmate for murder in June 2018 as the country's first execution since two men were executed in August 2009.²⁸⁸

In summary, despite the annual verdict, the death penalty has not been used in Thailand in recent years and has been used sparingly. Alternative ways to combat the drug problem have also been successfully used. It is possible to deduce that Thailand may be a country with a tendency to abolish the death penalty in practice in the future.

4.2.2 Myanmar's current drug control policies and penalties for drug crimes

Myanmar shares a 236-kilometer border with Lao PDR, which is less than the border with other neighboring countries. But Myanmar is a major source of opium and is located in the Golden Triangle with Laos and Thailand. This special location has a significant influence on the drug problem in the northern part of Lao PDR, where the

<<http://www.hrw.org/news/2009/12/14/thailand-convictions-police-drug-campaign-abuse-first-step>>, last accessed on July 11, 2020.

²⁸² Ibid.

²⁸³ Nopporn Wong-Anan, "Thai PM Vows 'Rigorous' War on Drugs Despite Outcry," Reuters, February 22, 2008, <<http://www.reuters.com/article/2008/02/22/us-thailand-drugwar-idUSBKK14639420080222>>, last accessed 23 June 2021.

²⁸⁴ David T. Johnson and Franklin E. Zimring, *The Next Frontier National Development, Political Change and The Death Penalty in Asia* (Oxford University Press, 2009), 399.

²⁸⁵ Ibid

²⁸⁶ Thailand Narcotics Control Annual Report, 2019 (Office of the Narcotics Control Board, Ministry of Justice) 2019, 29.

²⁸⁷ Cornell Center for the Death Penalty Worldwide, Cornell Law School, database <<https://deathpenaltyworldwide.org/database/#/results/country?id=78>>, last accessed on 6 March 2022

²⁸⁸ Ibid

drug problem in the Golden Triangle is already mentioned in Chapter 3. Although Myanmar is not a party to the ICCPR, it is a member of ASEAN and has enforced crackdown on drugs. But while it imposes the death penalty on drug crimes, Myanmar has not executed any drug offender for a long time since 1988 at latest.²⁸⁹ Thus, Myanmar kept a country that has *de facto* abolished the death penalty for more than 30 years. However, the execution of 4 political prisoners in July 2022 is regarded as a very significant event in the Burmese state because it had been more than 3 decades since the last execution.²⁹⁰ This section will highlight Myanmar's current drug control policies and penalties for drug offenses.

4.2.2.1 Myanmar's Drug Control Policy

In order to deal with the challenges of the narcotics issues, the Government of Myanmar promulgated the *New National Drug Control Policy* in February 2018. The new policy was developed under the partnership with the UNODC. In the same year, the government amended the *Narcotics Drugs and Psychotropic Substances Law* in order to provide more details of medical treatment for addicted people to meet the international requirement. This law proposed a health-based approach to drug abuse, while the funding for sustainable projects, education program, awareness and job creating were provided in the law as well.²⁹¹ The new policy contained five areas, namely, supply reduction and alternative development; demand and harm reduction; international cooperation; research analysis; and compliance with human rights standards.²⁹²

The cooperation between Myanmar and its neighboring countries is very important in dealing with the drugs issues, especially under the Border Liaison Office and Safe Mekong Coordination Center.²⁹³ The National Drug Control Policy recognized that Myanmar is the largest place for methamphetamine production in the world. There were

²⁸⁹ IRRAWADDY, A History of Capital Punishment in Burma, <<https://www2.irrawaddy.com/article.php?art id=118>>, last accessed access March 5, 2022

²⁹⁰ The Diplomat: Myanmar's Executions Have Turned the Country's Struggle into a Zero-Sum Game <<https://thediplomat.com/2022/08/myanmars-executions-have-turned-the-countrys-struggle-into-a-zero-sum-game/>>, last accessed on 23 September 2022

²⁹¹ Harm Reduction International, "The Death Penalty for Drug Offences: Global Overview 2018," <<https://www.hri.global/death-penalty-drugs-2018>>, last accessed June 28, 2021.

²⁹² Ibid, 75, 581.

²⁹³ UN, International Narcotic Control Board, 2019, 49.

60,000 to 80,000 drug-related prisoners in Myanmar, and drugs have brought negative consequences to social health, families, and communities.²⁹⁴

To stop the drug-related problems in Myanmar, the government had proposed cooperation between government and non-government stakeholders in the national and local levels, and the enhancement of cooperation mechanism and law enforcement. Alternative development was also one of core trends to reduce the narcotic drug issues in Myanmar, considering that lack of food security, poverty and political uncertainty are factors in the increasing opium cultivation. Providing investment in sustainable livelihood programs for local communities could help reduce the level of poverty.²⁹⁵

Myanmar's drug control policy also recognized the significance of effective legislation and law enforcement in dealing with drug-related crimes. Thus, strengthening law enforcement including investigation, fair trial and punishment must be improved.

The reduction of corruption and money laundering regarding to income generating from illicit drug trafficking must also be addressed by cooperation among stakeholders.²⁹⁶ The role of anti-drugs community-based organizations had to be strengthened in order to reduce the negative impact of illicit drugs to health, social and economic conditions. The Myanmar authority stressed that illicit drug users must also have access to treatment by voluntary approach in order to improve their mental and physical health; they must also be provided with skills training inside the rehabilitation and treatment centers.²⁹⁷

4.2.1.2 Death Penalty for Drug-related Crimes in Myanmar

In order to understand the application of law in dealing with drug issues in Myanmar, it is important to know the general drug situation in Myanmar. A UNODC report noted that Myanmar was the world's leading producer of illegal opium in the 1980s.²⁹⁸ Between 1981 and 1987, the country had an average annual opium output of 700 tons, which increased until 1996, when it reached annual production levels of over

²⁹⁴ Myanmar Central Committee for Drug Abuse Control, National Drug Control Policy, 2018, 8.

²⁹⁵ Ibid, 14

²⁹⁶ Ibid 15

²⁹⁷ Ibid 19

²⁹⁸ UNODC, Myanmar Opium Survey 2017

1,600 tons. Afghanistan surpassed Myanmar as the world's top opium producer in 1991.²⁹⁹

The Government of Myanmar promulgated an action plan for 1999-2014 and later set a five-year action plan for the period of 2015-2019 in order to ensure better approach in solving the illicit drugs issues of the country.³⁰⁰ Despite these plans, Myanmar continues to be the main source of methamphetamine to its neighboring countries including Lao PDR.³⁰¹ In addition, opium cultivation in Myanmar still shares a sizable portion (5%) of world production, although opium production in Myanmar decreased by 14% from 647 tons in 2015 to 550 tons in 2017.³⁰²

In 2017, the UNODC reported that opiates entered China and Thailand via Myanmar and that it remained to a source of heroin transported to Oceania (mostly Australia). Meanwhile, the seizure of heroin and morphine in East and South-East Asia dropped by 6% from 2016 to about 11 tons in 2017.³⁰³ Moreover, in 2019, according to the UNODC reports, the Shan State of Myanmar was the source of methamphetamine and related precursors chemical substances that spread to border countries namely Lao PDR, Thailand, and China.³⁰⁴

In 2020, the estimated of opium cultivation area in Myanmar was 29,500 hectares, smaller by 11% from 33,100 hectares in 2019, and even smaller than the 41,000 hectares in 2017, and 55,500 hectares in 2015.³⁰⁵ There were 57,600 hectares of opium plantations in 2014, which means that there was a decline of almost 51% in 2020. However, approximately 405 metric tons of opium were still produced in Myanmar in 2020.³⁰⁶ The Shan State was a major opium cultivation area with 25,000 hectares (84%),

²⁹⁹ Ibid

³⁰⁰ UN, International Narcotic Control Board, 2019, 49.

<https://www.incb.org/documents/Publications/AnnualReports/AR2019/Annual_Report_Chapters/08_Chapter_III_Asia_Annual_Report_2019_E_.pdf>, last accessed April 2021,

³⁰¹ UNODC, Southeast Asia and Pacific, <<https://www.unodc.org/southeastasiaandpacific/en/what-we-do/toc/drugs-and-precursors.html>>, last accessed January 29, 2021.

³⁰² International Narcotics Control Board, Asia Annual Report 2018,

<https://www.incb.org/documents/Publications/AnnualReports/AR2018/Annual_Report_Chapters/08_Chapter_III_Asia_Annual_Report_2018_E_.pdf>, last accessed April 2021, Par.588, 589

³⁰³ Ibid, 590.

³⁰⁴ UNODC, Transnational Organized Crime in Southeast Asia: Evolution, Growth, and Impact, 30.

³⁰⁵ UNODC, Myanmar Opium Survey 2020, Cultivation, Production and Implications, (January 2021), 7.

³⁰⁶ Ibid

followed by Kachin State with 3,600 hectares (12%), with the remaining 1,200 hectares (4%) in Chin and Kayah States.³⁰⁷

Myanmar has a drug policy that includes criminal law determined to punish violators with the maximum death penalty. However, the death sentence in Myanmar has not been enforced in practice and has been *de facto* abolished since 1988. Given that the death penalty has been *de facto* abolished for thirty years, Myanmar's execution of the death penalty in 2022 demonstrates that it is uncertain whether the country will continue to enforce the death penalty or not. Nonetheless, it is evident that this execution has no direct connection to drug crimes.

4.3 Cambodia: *de jure* abolishment of the death penalty

While Cambodia is one of the countries that share border with Lao in the south, drug production in the Golden Triangle also impacted on Cambodian society³⁰⁸ in terms of methamphetamine market. Drug users treated in 2018 numbered to 471 for crystalline methamphetamine tablet use, 163 for ecstasy, 25 for heroin, 26 for ketamine, 17 for cannabis herb, and 154 for other drugs. The number almost doubled from about 10,000 drug users in 2014 to almost 20,000 in 2019.³⁰⁹

According to the UNODC, Cambodia is the world's largest source of heroin and a key center for the manufacture and trade of amphetamine stimulants. The country also has become a major transit for drug trafficking, and the number of amphetamine users increased sharply.³¹⁰ The Secretary General of the National Authority for Combating Drugs (NACD) requested the Greater Mekong Sub-regional (GMS) countries to foster the implementation of drug control action plans to deal with drug issues in the region.³¹¹ Still, the Royal Government of Cambodia has been working in implementing multi-sectoral strategy on drug control throughout the country.³¹² The government noted that

³⁰⁷ Ibid

³⁰⁸ United Nations Office of Drug and Crime, Synthetic Drugs in East and Southeast Asia, Latest developments and challenges, May 2020: xiv.

³⁰⁹ Ibid, 35-36.

³¹⁰ UNODC, Cambodia Office, <https://www.unodc.org/southeastasiaan_pacific-en/Cambodia/overview.html>, last accessed February 16, 2021.

³¹¹ Khmer Times, "Kingdom Urges GMS Countries to Boost Drug Control Actions," 29 May 2020, <<https://www.khmertimeskh.com/50728465/kingdom-urges-gms-countries-to-boost-drug-control-actions/>>, last accessed February 16, 2021.

³¹² Ibid.

in its anti-drug campaign from the 2017 to 2020, there were at least 55,770 people arrested on suspicion of using or selling drugs.³¹³

In Cambodia, two laws outlined the punishments against illegal drugs, namely, the *Law on Control of the Drugs* 1996 and the *Criminal Code* 2009. According to the Article 47 of the *Law on Control of Drugs* the maximum terms of punishment based on the articles 31 to 40 could double depending upon different circumstances.³¹⁴

On the other hand, the *Law on Drug Control* of 1996 did not include the death sentence for drug-related crimes. The courts have imposed life imprisonment as the maximum penalty for any individual who planned and commanded a gang of criminals or who sponsored such a group of criminals in order to conduct one or more of the acts specified in the articles 31 to 40.³¹⁵ Article 34 provided for a cash fine penalty from 50,000,000 (fifty million) riels to 100,000,000 (one hundred million) riels. However, Cambodia the abolished death penalty in 1989, and Article 32 of the Cambodian Constitution of 1993, as revised in 2008, states that “everyone” has the right to life, freedom, and personal security, and that capital punishment is forbidden.”³¹⁶

³¹³ Amnesty International, Substance Abuses, the Human Cost of Cambodia’s Anti-Drug Campaign, 2020: 5.

³¹⁴ Article 47, Law on Control of Drug, 1996: The maximum punishment terms as specified in article 31-40 of this law, shall be increase in double if:

1. The principal of the offense is a member of an organized group/cliq.
2. The principal of the offense has been involved in other illegal activities which the existing drug offense which he/she committed, has facilitated them.
3. The principal of the offense has used violence or weapon.
4. The principal of the offense is performing a public function and the offense is committed during the performance of such function.
5. a health professional or person who is in charge of duty of combatting against the illicit drug abuse or trafficking and who commits an offense.
6. When during the delivery of drug or request to use them or facilitation to a minor or mentally insane person or person under medical detoxification treatment, there is abuse of drugs.
7. When during the commission of the offense, there is involvement of a minor or mentally insane person.
8. When during the use, it caused death or serious danger to health of one or many persons.
9. When the offense is committed in a penitentiary or educational establishment hospital or clinic, social service center or other places where pupils and students are conducting their education and sport activities or social action, or in the nearby area adjacent to the establishments and those laces.
10. The principal of offense added in the drug other substances which aggravated the extent of the danger.
11. The principal of the offense is in a state of recidivism (repetition of offenses). The court pronouncements of other foreign countries shall also be included in considering such recidivism.

³¹⁵ Ibid, Art 34,

³¹⁶ Cambodian Constitution, 1993, Art.32

4.3.1 Cambodia's Drug Control Policy

The UNODC identified Cambodia as one of the regional countries, together with Lao PDR, Thailand, Vietnam, and Yunnan province of China that transported methamphetamines produced from the Golden Triangle.³¹⁷ Therefore, the Government of Cambodia worked hard to cope with the drug situation by engaging in both domestic efforts and regional and international cooperation.

According to the Amnesty International, the Cambodian government dubbed the anti-drug campaign “the war on drugs.” This event was announced a week following a state visit to the Philippines, during which two governments pledged to collaborate in the fight against narcotics. As a result, the program intended to reduce drug usage and related consequences in Cambodia, including through arresting drug users in large numbers.³¹⁸ In addition, the government promoted its efforts in combating illegal drugs by conducting various educational campaigns in both urban and rural communities, making people aware about the dangers of drug abuse. At the same time, the government invited public and private organizations to join workshops and other events. The campaign established drug control committees were established in 25 provinces and drug users were provided educational aids. More than nine million Cambodians were beneficiaries of such educational campaign on drug prevention.³¹⁹ There were also study tours and seminars on confiscation and management of confiscated drugs.³²⁰

The Cambodian government also established border liaison offices in provinces to prevent drug abuse in the villages or local communities. In 2020, the government selected two provinces (Preah Vihear and Stung Treng) as the focus of its anti-drug trafficking campaign. In 2021, the focus expanded to include five border provinces (Battambang, Banteay Meanchey, Oddar Meanchey, Preah Vihear and Stung Treng) for similar anti-drugs efforts.³²¹ At the same time, Cambodia established bilateral cooperation with the neighboring countries like Lao PDR, Thailand, and Vietnam to

³¹⁷ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth, and Impact* (UNODC, 2019), 30.

³¹⁸ Ibid

³¹⁹ 2nd meeting of the ASEAN-Inter Parliamentary Assembly Advisory Council on Dangerous Drugs (AIPACODD) 12-15 March 2019, Chiang Mai, Thailand, Cambodia Country Report, 1.

³²⁰ Ibid. 4

³²¹ Lay Samean, ‘Golden Triangle’ Reviving Reputation as Drugs Haven, Phnom Penh: *The Phnom Penh Post*, 20 September 2021, <<https://www.phnompenhpost.com/national/golden-triangle-reviving-reputation-drugs-haven>>, last access, 23 September 2021.

ensure the sharing of information and build law enforcement network on drug-related issues.

The government of Cambodia has understood that illegal drugs and crimes represent the most important issues facing Cambodian society and national security³²². However, dealing with drugs issues has resulted in both positive and negative effects. The so-called war on drugs that the Cambodian government waged from January 2017 to March 2021 resulted in the arrest of 55,770 people, and 2,413 of them were sent to seven drug rehabilitation centers. According to the report entitled the *Secretariat 4th Campaign on Combating Illicit Drugs in 2020*, the overall number of drug users and addicts in 2019 was 20,091, a rise of 582 people from the previous year's figure of 19,509 people. Of the 9,451 drug suspects detained that year, the officials transferred 6,205 to rehabilitation centers around the nation and another 2,447 people were educated and sent home. The courts sentenced only 799 people to jail.³²³ Nonetheless, Cambodia provided educational, rehabilitative, and social integration programs as an alternative to conviction and punishment for small drug-related offenses.³²⁴

In conclusion, despite the fact that Cambodia has abolished the death penalty since 1993, Cambodia nevertheless retains harsh sanctions for drug offenses. At the same time, the lack of the death sentence does not exclude criminal convictions for drug offenses. The Cambodian government, on the other hand, has a severe strategy for dealing with the drug problem, particularly the declaration of war on drugs, but the government also has an alternate program that it has implemented well. However, Cambodia still has a significant drug issue, which is on the rise. Cambodia, on the other hand, has to revise its stated drug policy in order to avoid creating a loophole for drug trafficking.

³²² Council of the European Union, Brussels, 15 April 2014 (OR. en), 8990/14 CORDROGUE 26 ASIE 22
<<https://data.consilium.europa.eu/doc/document/ST%208990%202014%20INIT/EN/pdf>>, last accessed 23 September 2022.

³²³ Cambodia's Summary Report, 3rd Meeting of AIPA Advisory Council on Dangerous Drug (AIPACODD), 29 June 2020, Hanoi, Vietnam

³²⁴ International Drug Policy Consortium Briefing Paper, Drug Policy Drug Issues in Cambodia, November 2014,3

4.4 Drug-Related Crime Penalty Analysis in the Greater Mekong Subregion

4.4.1 General Overview

The drug problem poses a threat to the Great Mekong Subregion or GMS, including Cambodia, China, Laos, Myanmar, Thailand and Vietnam. These countries therefore need to work together to combat such threats, both bilaterally and multilaterally, by adopting relevant policies. One of the key policies is the criminal penalties for drug offenders, and at the same time the use of alternative development to address the drug problem as well.

The GMS nations are neighbors with tight borders and the Mekong River. These nations have anti-drug policies that include stringent legal measures and various types of punishments. Aside from Cambodia, countries such as China and Vietnam employ the death penalty while, Thailand, Myanmar, and Lao PDR retain it within law. China and Vietnam, on the other hand, have the largest number of executions each year. Despite the number of convictions each year, the Lao PDR and Myanmar are *de facto* abolitionists, having not executed a single person in more than 30 years.³²⁵ Thailand may become *de facto* abolitionist because the execution of the death penalty has suspended from 2003 to 2009 while the most recent execution took place in 2018.³²⁶

With the UNODC's support, the GMS nations signed the Mekong MOU on Drug Control in 1995 as part of the Sub-regional Action Plan (SAP). Following that, in 1997, it was altered to a no-time limit plan that can be updated based on drug conditions. In addition, the drug policy spectrum to the 2030 Agenda for Sustainable Development and the Sustainable Development Goals was acknowledged at the tenth edition of SAP 20017-2019 which including four important areas: (I) drugs and health; (II) law enforcement cooperation; (III) legal and judicial cooperation; and (IV) sustainable alternative development.³²⁷ Furthermore, all nations have passed anti-drug-crime legislation.

Despite the fact that several nations in the Greater Mekong Subregion have clamped down on drug crimes with harsh penalties, these governments are attempting to

³²⁵ The last execution in Lao PDR was in 1989, whereas the last in Myanmar was in 1988

³²⁶ Cornell Center for the Death Penalty Worldwide, Cornell Law School, Database, <<https://deathpenaltyworldwide.org/database/#/results/country?id=78>>, last accessed on 6 March 2022

³²⁷ Partnership, Cooperation and Action in the Great Mekong Sub-region, MOU on Drug Control, P.8, <https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/MOU_Brochure.pdf>, last accessed on March 2022

discover alternative solutions. This optional policy and problems discussed in further depth towards the end of this section.

4.4.2 Criminal Policy in the Greater Mekong Subregion against Drug-Related Crimes

The Sub-regional Action Plan (SAP) of the MOU between GMS on Drug Control has provided the significant elements related a criminal policy as legal and judicial cooperation mentioned above. Accordingly, the purpose of this objective is to reduce the occurrence of drug-related transnational organized crime, which includes the following activities: (1) increased the capacity of judges, prosecutors, and law enforcement officials to ensure the proper application of national drug legislation during investigations and prosecutions, as well as the execution of international requests for Mutual Legal Assistance (MLA) in drug-related cases; (2) improve the execution of MLA and extradition requests for drug-related investigations and procedures; and (3) strengthen international judicial cooperation in the areas of asset seizure and asset discovery.³²⁸ Furthermore, with the exception of Cambodia, all GMS nations enacted applicable legislation against drug-related offences, up to and including the death sentence.

First, in order to combat drug-related crimes, most of the countries have implemented harsh penalties including, in some countries, the death penalty. In China, for example, the trafficking of 50g of heroin or amphetamine carries the death penalty.³²⁹ In Vietnam, however, courts apply the death penalty in cases involving a double amount of the limited Laos, on the other hand, the courts may decide on a death sentence for anyone caught with 500g of heroin or 3kg of amphetamine.³³⁰

Table 7: Comparison of the minimum quantity of Narcotic Drug for Death Penalty

Country	Heroin	Ampheta mine	Opium	Other substance
China	50g	50g	1000g	

³²⁸ Partnership, Cooperation and Action in the Great Mekong Sub-region, MOU on Drug Control, 16<https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/MOU_Brochure.pdf>, last accessed on March 2022

³²⁹ Criminal Law of the People’s Republic of China, Art. 347 (2011)

³³⁰ Criminal Code of the Lao PDR, art.314, 315, 316(2017)

Laos	500g	3kg		
Myanmar	3g	3g	100g	
Thailand	3g	1,5g		
Vietnam	100g	100g		300g

Source: Criminal laws of China, Laos, Myanmar, Thailand and Vietnam
(Collected by author)

According to a report presented at the last Lao-Thai Drug Prevention Cooperation Conference in Vientiane in 2021, Laos handled more than 3,500 drug-related cases, and the police recovered a substantial volume of illegal narcotics.³³¹ In addition, 5,217 persons were imprisoned in connection with these instances this year, including 509 women and 119 foreigners. The police recovered 467.795 kg of heroin, 143,007,700 methamphetamine pills, 2,990,960 kg of crystal methamphetamine (Ice), 18,845 kg of opium, 5,846.698 kg of cannabis, and 19,480.330 kg of powder.³³²

In Laos, Myanmar, and Thailand, the death penalty exists as a severe punishment on paper for drug-related crimes. On the other hand, numerous sources claim that, despite the use of the death penalty in China and Vietnam continue to have a large number of drugs-related crimes.³³³ The table below shows that the statistical number of punishments and executions in Vietnam and China between 2016 and 2020 is still very high, especially in China. As for Vietnam, although the number of death sentences has been shown each year, it is still unclear the number of prisoners who have been executed.

Table 8: Death Sentences and Execution in China and Vietnam from 2016-2020

Countries		2016	2017	2018	2019	2020
China	Sentenced	1000+	1000+	1000+	1000+	1000s
	Executed	1000+	1000+	1000+	1000+	1000s
Vietnam	Sentenced	63+(54)	35+(31)	122+	76+(73)	54+(47)

³³¹ Phnom Penh Post, Laos Police Resolved over 3,5000 Drug Cases National Wide Last Year, Phnom Penh: *The Phnom Penh Post*, 9 March 2022, <<https://www.phnompenhpost.com/international/laos-police-resolved-over-3500-drug-cases-nationwide>>, last accessed on March 2022

³³² Ibid

³³³ Amnesty International Annual Report, Death Penalty 2021: Facts and Figures, <<https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/>>, last access 22 February 2022

	Executed	+	+	85+	68	+
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Source: Amnesty International Annual Reports

According to Bounthieng Phommachanh et al,³³⁴ raising the criminal penalty for drug-related crimes in Lao PDR had not resulted in a reduction in drug-related crimes up to 2011. These researchers advised that the government should revise statute since it was not implemented. In this context, Article 146 of Lao criminal code provided for the death punishment for more than 500g of heroin, however, no execution has taken place since 1989. These scholars' observations are correct but it does not necessarily mean that a simple abolition is the solution. According to Articles 255 and 256 of the Criminal Procedure Law, the state should carry out a death sentence one year after no the person has requested a pardon or if the president has not granted one.³³⁵ Furthermore, the majority of Greater Mekong Subregion nations, including Lao PDR use the death sentence as a severe punishment for drug-related offenses.

4.4.3 Alternative Developments Addressing Drug-Related Problem in the GMS

Countries around the world, including the GMS, have adopted an alternative development (AD) policy as another effective way to tackle the drug problem. The UNODC and the UN has set out a set of principles so that all countries can use it as a basis for proper implementation. In fact, in addition to the common principles that are the basis for practice, each country must rely on its own specific points in order to adapt in a consistent and effective manner. This study will not go into the details of the AD but will present the current overall situation of the GMS countries in using such a policy.

Over the last ten years, the UNODC has supported AD programs in Myanmar and Lao PDR as part of a broader effort to combat the drug problem.³³⁶ Furthermore, the UNODC assisted Member States in developing and implementing sustainable AD policies and programs in collaboration with the governments of Thailand, Myanmar, and Lao PDR, as well as NGOs and quasi-governmental agencies, in order to promote

³³⁴ Bounthieng Phommachanh et al., "The Issue in Drug Trafficking Offenses after the Lao PDR Have Amended the Penal Law by Increasing the Highest Penalty Level," National University of Laos, 2011

³³⁵ Criminal Procedure Law of the Lao PDR, 2017, articles 255, 256

³³⁶ UNODC Regional Office for Southeast Asia and the Pacific, Sustainable Alternative Development, <<https://www.unodc.org/roseap/en/what-we-do/drugs-health-ad/sustainable-overview.html>>, last access 22 February 2022

AD policies and good practices at both the national and regional levels, and to strengthen South-South cooperation and partnerships.³³⁷

Part of the aims of alternative development was on eliminating illicit opium production while also providing sustainable alternative livelihood possibilities for existing or former illicit crop producing populations. As a result, alternative development programs aimed at illegal drug crops are integrated into national drug control plans and strategies, with an emphasis on long-term sustainability. Second, GMS countries implemented AD programs with regard to improving the communication and coordination to support current programs and provide new avenues. Finally, GMS countries also carried out annual opium crop monitoring and evaluations.

According to the UN guiding principles on AD, the primary concerns for the GMS focus on six goals for sustainable development: 1) examine development-related and infrastructure components; 2) study Human Development Indicators (HDI); 3) consider long-term and integrated plans; 4) ensure appropriate access to land; 5) provide adequate access to markets; and 6) must promote local ownership and community engagement with an emphasis on women.³³⁸ The GMS nations have substantially applied these concepts under the supervision of the UNODC. However, effective implementation must be dependent on the character and unique characteristics of each nation, as well as the government's attempts to address the drug issue in a variety of methods, as alternative development has been used in conjunction with severe punishment.

However, AD is only one of the methods that UNODC is seen as effective in solving the drug problem, but it does not mean that no other measures will be taken. The countries here, including the GMS countries, still need to use AD creatively and proactively, because the AD programs are on-going, and still in the status of embryo. At the same time, each country's unique features and suitability should be duly taken by the GMS countries into consideration in order for it to be successful.

³³⁷ Ibid

³³⁸ UNODC, Mekong MOU on Drug Control, 2015

4.4.4 Sub-conclusion

In summary, the GMS countries, including Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam, all have their own clear policies and cooperate in drug inspection and control. However, these countries have not been able to eradicate the drug problem and continue to pose a threat in this area. Finally, the current and accepted UN approach is the use of AD to address the drug problem and is seen by UNODC as an effective and widely used approach along with criminal penalties.

GMS governments evaluate drug crimes as very serious and therefore the ones that must be punishable by death. Cambodia has abolished the death penalty, although dangerous drug offenses carry a life sentence. While Lao PDR, Myanmar, and Thailand have the death penalty, no executions have occurred. Each year, China and Vietnam continue to carry out a large number of drug-related convictions and executions. In reality, the death penalty does not solve the drug problem. The GMS nations consider the use of AD consistent and acceptable between the MOU governments in support of existing programs as well as expansion of AD.³³⁹

Conclusion

This study categorizes the present geopolitical context of drug related crimes into three groups: into three groups: China and Vietnam as employers of the death penalty, with Laos, Myanmar, and Thailand as *de facto*, and Cambodia having abolished it. However, all of these nations are members of the GMS, which share land boundaries and Mekong River. It is unsurprising that these countries must collaborate to combat the drug problem and impose appropriate criminal consequences for drug-related crimes.

China and Vietnam are major partners with considerable influence on Lao law and justice. Furthermore, both countries have political systems that are similar to Lao PDR but are tougher in their application of the law, particularly when it comes to the death sentence. China has the world's largest number of executions; however, the true extent of the death penalty's application is unknown due to the classification of data as a state secret. Chinese President Xi Jinping, on the other hand, urged efforts to maintain the country's severe anti-drug stance and the people's struggle against drugs in order to make new steps in drug control. At the same time, even if China imposes the death sentence

³³⁹ UNODC, Brochure: The Mekong MOU on Drug Control: Sub-regional Action plan, P.20

for drug trafficking cases involving 50g or more of Heroin, the respective drug lord will face the same punishment. In Vietnam, however, the same sentence applies indiscriminately for possession and trafficking, with the death penalty applied in the instance for the possession, transportation, or trafficking of heroin weighing 100g or more.

Myanmar and Thailand have similar views on the elimination of the death sentence, particularly for drug offenses. Myanmar, which is regarded a de facto abolitionist country, last executed a person in 1988 while the Thai government has taken steps to eliminate the death penalty in practice. In terms of law, Myanmar and Thailand, on the other hand, still have the death sentence on the books for drug crimes. However, the Thai government has been attempting to eliminate capital punishment in practice with only a single instance between 2009 and now. However, both Myanmar and Thailand have imposed harsh penalties in collaboration with neighboring GMS nations and ASEAN.

Cambodia, unlike its neighbors in Lao PDR, is the only nation in the GMS and one of the few ASEAN countries that has abolished the death sentence. Nevertheless, Cambodia has severe laws and policies in place to combat the drug issue. The maximum sentence for significant drug-related offenses is life imprisonment, according to the *Drug Control Law* of 1996.

The present geopolitical framework of drug-related crimes in the Lao PDR's bordering nations; that is, the GMS countries, contains both criminal punishments for significant drug-related offenses up to and including death in nearly all countries except Cambodia. These governments extensively and effectively implemented alternative policies, in addition to criminal punishments, under the supervision of the UNODC. The last chapter of this study will examine at Lao PDR trends in the death sentence, the majority of which are tied to drug cases.

Chapter V: Lao PDR's Perspectives on the Death Penalty

Introduction

For many years, public discussions or debates around the issue of death penalty were a taboo in Laos. Based on available academic and non-academic sources, this study can identify three forms of opinion that exist in Laos society. Also, within the context of this research, the author conducted several interviews and held talks with legal scholars and practitioners regarding the death penalty in Laos. First, presumably indigenous sense of justice which hates any human killing has been found even in the lawyers with whom I interviewed. Such a view does not appear in the legislative text, and remains at an informal level, but it certainly provides a moral basis for the practice of *de facto* moratorium on execution of the death penalty.

Second, after the establishment of Lao PDR, leaders introduced the socialist doctrine of function of the law which influenced the legislation in the field of criminal matters. The socialist doctrine is the formal ideology throughout the current Lao society. Through the educational system, this doctrine remains influential particularly among the political elite and thus the party members, and it is not easy to modify it.

The socialist doctrine puts emphasis on educational effects on individual wrongdoers and the general public regarding criminal laws.³⁴⁰ The doctrine is neither based on the retribution theory of penalty nor on individualism. The penal sanctions are characterized as tools for education which prioritizes the defense of the state and society. From such a doctrine, it would be natural that crimes against state are among the most serious one. In a society where drug problems are serious particularly in terms of the malicious effects on young people, drug crimes drug crimes also become a problem to society.

³⁴⁰ Criminal Code, Art. 43, 2017, Purposes of Penalties: "Penalties do not only aim to punish offenders, but also to re-educate punished individuals to bear a pure spirit towards work, to comply correctly and strictly with the laws, to respect the discipline of social life, and to avoid recidivism on the part of the punished offender and other individuals. Punishment does not aim to generate physical suffering or to outrage human dignity."

Third, particularly after the ratification of the *International Covenant on Civil and Political Rights* in 2009,³⁴¹ the Western theory of criminal law (based on individualism) began to exercise some influence over Lao PDR. From this view, the state should decriminalize victimless crimes. The Human Rights Committee charged with implementing this covenant has also advocated such a theory (at least implicitly). Therefore, the committee (???) considers that the death penalty would be for the “the most serious crimes” that might potentially result in the death of another person. While growing in influence, this view still remains a minor opinion in Laos.

5.1 Informal De-facto Moratorium regarding the death penalty in Laos

In 1989, Lao PDR promulgated a criminal law, which criminalized 11 special offenses that might have implemented the death penalty.³⁴² There was no specific statute or criminal code that would deal with death penalty in a detailed way until 2004, when the Lao PDR amended its criminal procedure law that de jure institutionalized the death penalty and its procedure.³⁴³ Since 2004, the relevant agencies such as the Prosecutor's Office, the People's Court, the Ministry of Defense and the Ministry of Justice have agreed to issue specific regulations to implement the death penalty.³⁴⁴ To date, however, there have been no executions. On the other hand, more individuals are sentenced to death each year. While the Lao PDR has de facto abolished the death penalty, it has not expressed these views in the international arena or in its own laws. This chapter illustrates that a *de facto* moratorium on the death penalty is possible in Laos.

The Supreme Court can review all death sentences in Laos. If the president of the Supreme Court upholds the death sentence of the lower court, the convicted person may still seek amnesty from the nation's president within 30 days of the date of the Supreme Court's final order or the notification date to the convict.³⁴⁵ The execution should take place one year after the date of the president's decision not to grant amnesty or the date

³⁴¹ International Covenant on Civil and Political Rights adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A(XXI) of 16 December 1966, which entry into force 23 March 1976, in accordance with Article 49. Lao PDR signed on 7 December 2000 and ratified it on 25 September 2009

³⁴² Criminal Law, 1989

³⁴³ Criminal Procedure Law, 2004

³⁴⁴ Criminal Law, 1989

³⁴⁵ Criminal Procedure Law, Art. 107, 2004

on which the Supreme Court upholds the death sentence without granting amnesty.³⁴⁶ However, the law does not specify the rules for the application of the death penalty until the very end.

The nation has not applied the death penalty for many consecutive years. The legislator's amended the Criminal Procedure Law in 2012 and 2017. In addition to the *Criminal Procedure Law of 2004*, these two statutes elaborate on the principles governing the application of the death penalty. In particular, in addition to the Supreme Court's responsibility to verify the accuracy of lower courts' decisions on the death penalty, the Attorney General also has duties and procedures outlined in Chapter I (1.3.2). And according to this law, the president of the court of first instance that imposed the death penalty must appoint a committee for the execution of the death penalty with a specific function. Although the law of criminal procedure outlines the principles for the implementation of the death penalty in, no relevant committee or regulations have yet to be established. Therefore, the state has not carried out an execution in the Lao PDR in nearly 30 years.

According to international principles, the concept of *de facto* abolition would apply to a country that retains the death penalty in law but has not carried out any executions for the past 10 years or more.³⁴⁷ At present, in the world, 40 countries are *de facto* abolitionist,³⁴⁸ including Lao PDR. Nonetheless, based on the reforms of the related laws, it appears that Lao PDR will continue to hand out death penalty sentences, albeit without official documentation. In this context, the Human Rights Committee has requested that the Government of Lao PDR review its policy on the official recognition of the *de facto* moratorium and sign the *Second Optional Protocol to the International Covenant on Civil and Political Rights*, which aims to abolish the death penalty.³⁴⁹

As a result, the death penalty in Lao PDR is a contentious issue with a potential *de facto* status. The law provides for this type of punishment, but national government does not execute people since 1989. For more than 30 years the death penalty existed in

³⁴⁶ Ibid

³⁴⁷ Amnesty International Secretariat, February 1992, AI Index: ACT 50/001/1992 Dist.: SC/DP/PO

³⁴⁸ Cornell Center for the Death Penalty Worldwide, Cornell Law School Database, <<https://deathpenaltyworldwide.org/database>>, accessed on 15 April 2021, at 15:30

³⁴⁹ Concluding Observations on the initial report of the Lao PDR, The Committee considered the initial report of the Lao People's Democratic Republic (CCPR/C/LAO/1) at its 3504th and 3505th meetings (see CCPR/C/SR.3504 and 3505), held on 11 and 12 July 2018. At its 3519th meeting, held on 23 July 2018, it adopted the present concluding observations, dated 23 November 2018, 3.

legal text, but was not implemented practically. Despite the fact that it is not carried out, the death penalty is stipulated in the Lao PDR criminal code as one of the reasons to deter serious crimes. It can therefore be concluded that there is a de facto informal moratorium on the death penalty, as it is not defined in the law or other official documents. Consequently, it is crucial for the Lao government to examine this issue and ensure that the law is consistently and effectively implemented.

The following considerations should be however taken into account. The de facto moratorium on death penalty, despite being in conflict with a country's black letter law, hardly makes any effect on the overall opinion of people in Laos. The mere fact that Laotian black letter law contains death penalty is explained by the Lao PDR's legal system, which is rooted in socialist doctrine that was imported from abroad, with a little consideration to the local social and cultural specifics.

5.2 Socialist Doctrine on the Death Penalty

Lao PDR is one of the few socialist countries that still exist today.³⁵⁰ Therefore, the concept of socialist law, particularly the laws of the former Soviet Union continue to influence Laos today. Nevertheless, given the unique characteristics of these socialist countries, there may be different ways of implementing the same concept in order to accommodate the specific context as the death penalty. This section, therefore, addresses the issues pertinent to the socialist doctrine of the role of the law in criminal matters. In addition, a comparison will be made between Lao PDR and Vietnam, as socialist countries, regarding the death penalty.

After achieving a decisive victory in 1975,³⁵¹ the Lao People's Revolutionary Party,³⁵² a Marxist-Leninist party with a socialist ideology, led the further development of the Lao PDR. After coming to power, the new leadership eliminated the old regime's bureaucracy, including its legal and justice system. The Lao PDR was gradually established on the basis of the state and collective socioeconomic model. Until 1976, the state depended on Order No. 53 / PM³⁵³ in criminal proceedings,

³⁵⁰ The socialist countries today are China, Cuba, Lao PDR, North Korea and Vietnam

³⁵¹ The Lao PDR was established on 12 December 1975

³⁵² The Lao People's Revolutionary Party built based on the former Indochinese Communist party on 22 March 1955 led by President Ho Chi Minh

³⁵³ Order 53/PM, 15 October, 1976, on Arresting, Investigation and Offender's Judgment

investigations, and justice. In this context, Lao society was in a proletariat period, the initial phase of the revolution during the post-Soviet socialist path. The criminal law began to take shape at the end of 1989.³⁵⁴ Both the Soviet Union and Vietnam influenced the legal and judicial platform as they were allies in the fields of national revolution, democracy, infrastructure, and post-revolutionary infrastructure, including the legal system and justice.

Despite the fact that extremely conservative in nature the Lao People's Revolutionary Party led the country even after the cold war era, the process of opening Laos to the outer world started at the mid-1980s.³⁵⁵ This has led to Lao PDR's increased cooperation and participation in the international arena, including its accession to ASEAN in 1976 and ratification of the ICCPR in 2009.

The section below will therefore provide a more in-depth analysis of some of the issues associated with the socialist doctrine and the function of law in criminal matters and the rationale for the death Penalty. The section examines some of the issues surrounding the death penalty in the Lao PDR and neighboring Vietnam, which have similar political systems, governance, and socialist ideologies, but differ in practice. In conclusion, despite having a legal system based on socialism, the Lao PDR is a country with differing viewpoints on the death penalty.

5.2.2 Socialist Doctrine of the Law's Function in Criminal Matter on the Death Penalty

The socialist theory of punishment, especially on the issue of the death penalty continue to exist within criminal law in the socialist countries such as China, Cuba, Lao PDR, North Korea and Vietnam. According to this theory, the purpose of punishment is to educate the public on the importance of law enforcement and to impose a penalty on the offender. In this regard, the state and collective interests as well as the life and property of the people, are the highest priorities.

For Lao PDR, the purpose of punishment is clearly defined in the general section of the *Criminal Code*, in which the main purpose of punishments to educate the

³⁵⁴ 4 laws adopted in November 1989: Criminal Law, Criminal Procedure Law, the law on the People Court and the law on the Office of Prosecutor of the Lao PDR

³⁵⁵ The IV Congress of the Lao People's Revolutionary Party adopted the policy of change

perpetrators, protection of the political power as the people's democratic dictatorships, socialist systems and state-owned property, property of the collective and raise people awareness of the law.³⁵⁶ Accordingly, judges have given out the death penalty as an extreme measure of punishment for serious crimes as provided in the special part of the criminal code.

As the leader of the Greatest October Revolution in Russia in 1917, Lenin consistently defended the death penalty as an effective tool in the class struggle. According to him, "no revolutionary government can exist without the death penalty; the only question is against what class the death penalty will be directed."³⁵⁷ Originally, the coalition government abolished the death penalty during the October Revolution to secure the participation of the Left Socialist Revolutionary Party. In February 1918, Lenin reinstated the death penalty by decree as head of the of the revolutionary government for the execution of aggressive officials, speculators, robbers, hooligans, counterrevolutionary activists, as well as German secret agents.³⁵⁸ Therefore, the Soviet court handed out the first death sentence a on June 21, 1918, by the Supreme Tribunal of the Russian Soviet Federative Socialist Republic (RSFSR) in the case of Admiral Aleksei Shchastny of the Baltic Fleet.³⁵⁹ In addition, the objective of the Criminal Code of the RSFSR was the legal protection of the workers' State from crimes and the establishment of a revolutionary legal system.³⁶⁰ As a result of this concept and history, the death penalty has continued to be included in the criminal codes of socialist countries, even in those that are more permissive, such as Laos and Vietnam.

After the collapse of the Soviet Union, the socialist law concepts remained in the criminal law of China, Laos and Vietnam as well as for Cuba and North Korea. For example, the constitutions of China and Vietnam provide the death penalty.³⁶¹

³⁵⁶ Criminal Code of the Lao PDR, Art. 43, 2017

³⁵⁷ Ger P. Van den Berg, *The Soviet Union and the Death Penalty*, Source: *Soviet Studies*, Apr., 1983, Vol. 35, No. 2, P. 155

³⁵⁸ Ger P. Van den Berg, *The Soviet Union and the Death Penalty*, Source: *Soviet Studies*, Apr., 1983, Vol. 35, No. 2, P. 155

³⁵⁹ *Ibid*

³⁶⁰ RSFSR Criminal Code, 1922

³⁶¹ Fu, Gillepie, Nicholson and Partlett, *Socialist Law in Socialist East Asia*, Cambridge University Press, 2018: 21.

The Chinese criminal law states that:

The tasks of the PRC Criminal Law are to use punishment struggle against all criminal acts to defend national security, the political power of the people's democratic dictatorship, and the socialist system; to protect state-owned property and property collectively owned by the laboring masses; to protect citizens' privately owned property; to protect citizens' right of the person, democratic rights, and other rights; to maintain social and economic order; and to safeguard the smooth progress of the cause of socialist construction.³⁶²

While Article 1 of the Penal Code of the Socialist Republic of Vietnam states that:

The Criminal Code is meant to protect Vietnam's sovereignty and security; protect the socialism regime, human rights, citizenship rights; protect the equality among ethnic groups; protect interests of the State; organize and protect the law; punish crimes; raise people's awareness of compliance with the law; prevent and fight crimes.³⁶³

At the same time, Lao PDR's the 1989 Criminal Law in Article 1 stipulates that:

The Criminal Law intends to safeguard the political, economic and social regimes of the Lao People's Democratic Republic, to protect interests of the State, the legitimate rights and interests of citizens, the life, health, dignity, rights and freedom of Lao people, national security and social order; to prevent and counter offences; and to teach all citizens to be aware of the laws. In order to fulfil this role, the 2017 Criminal Code defines certain acts

³⁶² Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997. Available at: <<https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>>, Latest accessed 17 May 2022.

³⁶³ National Assembly of Socialist Republic of Vietnam, Penal Code, No. No. 100/2015/QH13, 2015.

which endanger the public as criminal offences and define penalties for the perpetrator(s).³⁶⁴

Also, the general part of criminal codes of Cuba³⁶⁵ and North Korea,³⁶⁶ stipulate that the objectives of law are to protect society, individuals, social, economic, and political order, and the state regime; to protect property recognized by the Constitution and the laws; to promote the full observance of citizens' rights and responsibilities; and to help form in all citizens a respect for socialist legality, the fulfillment of duties, and the correct observance of socialist coexistence rules. While the North Korean penal code states that the criminal law of the Democratic People's Republic of Korea defends the sovereignty of the state and the socialist system and, by establishing the system of criminal liability and the penal codes for crimes, ensures that the people are able to lead independent and creative lives."³⁶⁷ However, Cuba has maintained a de facto moratorium since 2003³⁶⁸ and at present no one is under death sentence.³⁶⁹

In sum, in the socialist law doctrine, the major concerns are for political power, the socialist system, state-owned property, and property of the collective. Therefore, committing a crime regarding the social system will be a more severe punishment comparing with the crime regarding to the rights and benefits of individual person. Although the socialist rule of law is the same, the actual practice of the death penalty varies according to the specific socio-economic and cultural context of each country.

5.2.3 The Difference between Death Penalty in Lao PDR and Vietnam

The practice of the death penalty in Lao PDR varies from that in Vietnam despite the comparable legal systems. While the death sentence is legal in Lao PDR, the state has not executed convicted criminals up to now. On the contrary, executions are systematic in Vietnam. However, comparing purely legal, and even legal procedural parts in these two countries may shed lighter on the roots of legal system and legal ideas.

³⁶⁴ National Assembly of Lao PDR, Penal Code, No. 013/NA, 2017.

³⁶⁵ Penal Code of Cuba, Art. 1.1, 1987

³⁶⁶ Criminal Law of the Democratic People's Republic of Korea, Art.1, 2009

³⁶⁷ Criminal Law of the Democratic People's Republic of Korea, art.1, 2009

³⁶⁸ JS4 UPR30_CUB_E_Main.pdf, last accessed on 15 May 2022

³⁶⁹ A/HRC/WG.6/30/CUB/1, 5 March, 2018

As examined at the Chapter I, if the People’s Supreme Court President confirms the death sentence and there is no denial from the Supreme Public Prosecutor then the state should carry out an execution in Lao PDR. ³⁷⁰ Furthermore, a prisoner on death row has the right to petition the president for a pardon, but if no pardon is granted then state should carry out the execution one year after the notification.³⁷¹ When a judges sentence a person to death, the President of the First Instance Court has the authority to issue an Order of Execution. Finally, the responsibility for carrying out is the Judgment Implementation Committee.³⁷² Since 1989, the state has not created such a committee.

In Vietnam, on the other hand, 18 crimes are punishable by death,³⁷³ and the courts hand out a number of deaths sentence each year. Even though Vietnam does not reveal the number of death sentence inmates executed since 2015, Amnesty International estimated that the figure was high in 2018 when compared to the other ASEAN nations.³⁷⁴ Vietnam replaced the firing squad with lethal injection since July 1, 2011.³⁷⁵ According to the law,³⁷⁶ in Vietnam, a death sentence is carried out in three stages. The first stage is the procedure preceding execution. Second, the procedure for parole, if the guilty prisoner desired one, and third, the actual execution of the death penalty.

According to Article 367 of the *Criminal Procedure Code of Vietnam*, immediately after the courts impose a death sentence, they transfer the case file to the President of the Supreme People’s Court, and the sentence conveyed to the Head of the Supreme People’s Procuracy. ³⁷⁷ Promptly, after reviewing the case file at the Supreme People’s Court, transmits it to the Supreme People’s Procuracy. During this time, the Supreme

³⁷⁰ Ibid

³⁷¹ Ibid

³⁷² Ibid, Art.256, 2017

³⁷³ Criminal Law, 2015, 18 death penalty’s crimes include Article 108. High treason, Article 109. Activities against the people’s government, Article 110. Espionage, Article 112. Rebellion, Article 113. Terrorism to oppose the people’s government, Article 114. Sabotaging facilities of Socialist Republic of Vietnam; Article 123. Murder, Article 142. Rape of a person under 16, Article 194. Manufacturing and trading of counterfeit medicines for treatment or prevention of diseases, Article 248. Illegal manufacturing of narcotic substances, Article 250. Illegal transport of narcotic substances, Article 251. Illegal deal in narcotic substances, Article 299. Terrorism, Article 353. Embezzlement, Article 354. Taking bribes, Article 387. Swapping a person under arrest, a person held in temporary detention, or a prisoner, Article 421. Disruption of peace, provocation of war of aggression, Article 422. Crimes against humanity, and Article 423. War crimes.

³⁷⁴ Amnesty International: “Death Sentences and Executions,” 2018,

³⁷⁵ Cornell Center for the Death Penalty Worldwide, Cornell Law School, Database <<https://www.DeathPenaltyWorldwide.com>, Vietnam>, Access on 15 May 2020

³⁷⁶ Law No.101/2015/QH13 Criminal Procedure Code of Vietnam, Art. 367, 2015

³⁷⁷ Ibid, at Art 367, 1.a

People's Procuracy must review the sentence and transfer it to the President of the Supreme People's Court within one month.³⁷⁸ As a consequence, the President of the Supreme People's Court and the Head of the Supreme People's Procuracy must decide whether the case has any grounds for appeal.³⁷⁹

In the absence of grounds for an appeal, the President of the Supreme People's Court or the Head of the Supreme People's Procuracy must make a judgment confirming the death penalty within two months. If grounds for an appeal are found within two months, the President of the Supreme People's Court submits the matter for a Cassation in the People's Supreme Court's Cassation Panel. Otherwise, the Head of the Supreme People's Procuracy reopens the matter in the Supreme People's Procuracy.³⁸⁰

Nonetheless, if the death penalty is affirmed by the Supreme Court, the convicted person has the right to petition the State President for clemency within 7 days.³⁸¹ As a result, if neither the State President deny a pardon or the convicted person no requests a pardon during this period, the execution will take place. In Vietnam the length of the petition for a Pardon very short, and the law does not fix a time when the convicted person would be executed if no pardon occurs. .³⁸²

However, according to Article 77 of the Law on the Execution of Criminal Judgments,³⁸³ before carrying out the death sentence, the President of the Court of First Instance must issue a decision to carry out the death penalty. Furthermore, a decision to execute the death sentence must be transmitted by court to the prosecutor's office, the criminal judgment execution agency, the detention center, and the province's Justice Department within three days.³⁸⁴ In addition, as soon as the court issues a decision to carry out the death penalty, the Court President should make a request for the formation

³⁷⁸ Ibid, 1.b

³⁷⁹ Ibid, 1.c

³⁸⁰ Ibid, 1.dd

³⁸¹ Ibid, 1.d

³⁸² Ibid, 1.e

³⁸³ Law No. 41/2019/HQ14, 14 June 2019, Law on Execution of Criminal Judgments, Art.77.1

³⁸⁴ Ibid, Art. 54.2

of the death penalty execution council.³⁸⁵ In essence the Vietnamese situation is not very much different from China.³⁸⁶

In comparison, the first step involving the final decision sent to the Supreme Court President and the Head of the Procuracy for there is similar in Vietnam and Laos. In. The length of review of the Court and Prosecutor' Office and the procedure is different. In Vietnam, the *Criminal Procedure Law* and the law on the execution of the criminal judgment regulates the application of the death penalty by. Meanwhile, though both countries have the death penalty in law, in Vietnam it is actualized and in Laos it is not.

In conclusion, the socialist concept of criminal punishment generally prioritizes acts that endanger the state and society over personal concerns such as life and property. The death penalty is enshrined in the criminal law of socialist nations, particularly for crimes against the state, murder, and also for drug offenses, as crimes seriously endangering the society. This issue illustrates the differences between Western ideas that prioritize the protection of individual rights over human rights. The formal ideology in Lao PDR relating to the death penalty must remain unchanged if the socialist system is to be maintained, but the practice must also take into account human rights concerns that may have influenced Lao PDR's accession to the ICCPR.

5.4 Discussion in the Lao PDR on the death penalty

There is still uncertainty in the Lao PDR as to whether the death penalty will be upheld under the law and how it will be implemented in light of the realities of Lao society. As described in the preceding section, the Lao PDR is a socialist country which, despite becoming a member of the ICCPR,³⁸⁷ has continued to apply the legal concept of the death penalty based on socialist ideology. The discussion on the future of the death penalty in Lao PDR is therefore necessary to clarify the formal commitment of the Lao government in the criminal law and criminal justice.

³⁸⁵ Ibid, Art. 55

³⁸⁶ The Criminal Code of China provided 41 crimes as the death penalty. Criminal Law of the People's Republic of China, adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, Revised at the Fifth Session of the Eighth National People's Congress on March 14, 1997. China becomes a most executioner country in the world, which more than a thousand death penalty inmates were killing each year. Amnesty International, *Death Penalty and Execution*, 2020, <<https://www.amnesty.org/en/documents/act50/3760/2021/en>>, last accessed on 14 April 2022

³⁸⁷ Lao PDR signed to ICCPR in 2000 and ratified in 2009

This section will examine the issue of the death penalty raised in the National Assembly of the Lao PDR during the debate on the adoption of the New Criminal Law in 2016. After the Lao government delivered the Order of the Central Political Bureau of the Party on increasing the party's leadership at each level to prevent and solve the drug problem in 2021 which include strict guidelines to implement the death penalty, especially against drug crimes.

5.4.1 Discussion at the NA

In 2016, according to the *Vientiane Times*, members of the National Assembly spoke out in favor of retaining the death penalty and seeking the execution of those convicted of serious crimes.³⁸⁸ Members voiced their support for the death penalty for those who have committed heinous murders or possessed large quantities of drugs during the ongoing discussion of the Criminal Code draft.³⁸⁹ Drug trafficking, which, according to National Assembly members, harmed families and posed a threat to national security and economic development, was the most concerning issue for which the death penalty should be preserved..³⁹⁰

In addition, during the NA session for consideration and approval of the Criminal Code in 2017, the death penalty became a controversial issue among the NA members of the committee drafting the code. Referring to the report on drafting the Criminal Code that present to the NA's session on 15-18 May 2017, the chairman of the drafting committee stated that the highest punishment in the current criminal law is death penalty for 18 circumstances of crimes. Since the Lao PDR is a member of international treaties on human rights, international relevance organization requested Laos to abolish the death penalty. However, according to the research of the criminal code's draft committee, the number of death penalty crimes decreased from 18 to 12 crimes (for 2017) that the courts ruled as serious crimes such as national security offence, severe murder and drug.

At the same time, the NA revised Article 49 of the Criminal Code to meet with the requirement of international standard, providing an exception for those under 18 years old and pregnant women. While more exceptions have been added in recent 2017 criminal

³⁸⁸ Vientiane Newspaper, Issued on 16 November 2016

³⁸⁹ Ibid

³⁹⁰ Vientiane Times, NA members remain in favor of death penalty, 18 May 2017, page 3

code, certain individuals such as; mother who raise child below 3 years old, person older than 60 years old, or those with brain disease will not be sentenced to death penalty.³⁹¹

Members of the National Assembly (NA) would like to see article on death penalty enforced primarily in terms of the shooting method of the death penalty, so they have proposed that "details of the shooting method of the death penalty will be provided in sub-regulation to ensure implementation." During the NA session, this article attracted many comments and a lengthy discussion by policymakers, the majority of NA members voted in favor of maintaining the death penalty.³⁹²

In reality, the National Assembly of Laos adopted the first criminal law and impose the death penalty more than 30 years ago, but it was never carried out, despite the respective law on criminal procedure providing for and detailing its implementation.³⁹³ Members of the National Assembly had the opportunity, when adopting this new criminal law, to request that the government examine whether the death penalty should remain in the law or be abolished. To date, there has been no progress on the death penalty in Lao PDR, with courts annually convicting individuals to a death sentence, particularly on drug charges. However, by the end of 2021, the Party Central Committee's Political Bureau ordered the Lao government to step up crackdowns on drugs and effectively impose the death penalty on drug crimes and implement it. This order was very important to the government's decision to continue to uphold the death penalty under the law and to enable it to be implemented.

5.4.2 Social Feelings Inside the Lao PDR on the Death Penalty

There are numerous arguments in favor of the death penalty in the Lao PDR. First, the Lao believe that the death penalty serves as a deterrent for the most heinous crimes and violations of moral principles. Second, the Lao government has enacted the *Criminal Code*, the *Criminal Procedure Law*, and the *Amnesty Law* in support of the death penalty. The number of death penalty prisoners is increasing, to 561 in 2001.³⁹⁴ A large number of these in detention are related to drug crimes. Lao PDR and ASEAN's neighboring countries continue to enforce the death penalty, particularly for crimes

³⁹¹ Report on drafting the Criminal Code that present to the NA's Session on 15-18 May 2017,

³⁹² NA, collection of comments to the Draft of Penal Code.

³⁹³ Law on Criminal Procedure, 2004, 2009, 2012 and 2017

³⁹⁴ Supreme Public Prosecutor, National Assembly, 24 March 2021

involving narcotics and corruption. As a result, the Lao PDR's death penalty has the support of the government and the people and the former has certainly attempted to follow the law.³⁹⁵

The Criminal Code of the Kingdom of Laos first included the death penalty in 1970 was in for those who committed a heinous crime such as murder. The purpose of the death penalty has been to deter heinous crimes, to make people respect the law and refrain from breaking it. According to legal advisor, the kingdom executed a small number of people in the past.³⁹⁶ Nonetheless, the belief that the death penalty could protect society from serious crime and garner public support persisted.

The Lao Government currently supports another argument for the death. Here, the state adopted the criminal law, law on criminal procedure, the law on amnesty and other regulations concerned. Accordingly, the government first introduced the death penalty into criminal law in 1989.³⁹⁷ While the Criminal Law of 2005 provided 18 death penalty crimes. On the other hand, there are still 12 most serious crimes with the death penalty of which 309 specify certain offences provided in the Criminal Code in 2017³⁹⁸ such as treason, rebellion, spying, physical harm against the interests of national security, destruction, disruption of state or social undertakings, civil commotion, damage or attack of detention and reformatory centers, the use of chemical weapons, murder, battery, and drug trafficking.³⁹⁹ In spite of this, the Criminal Code of 2017 reduced the number of crimes carrying the death compared to the Criminal Law of 2005.

At present, little academic scholarship exists that can offer any reliable measure showing popular support or non-support for capital punishment in Laos. Due to time limitations, the scope of this dissertation includes interviews with high-ranking public officials in order to ascertain some understanding for the government position regarding the death penalty. These interviews were conducted with officials who had a direct relation to the topic and could freely express their ideas and experience. From their responses, this study presents the various reasoning showing no clear consensus for the abolishment or activation of the death penalty in Laos.

³⁹⁵ Ibid

³⁹⁶ Pholsena Houy, legal advisor of MOJ, interview on November 2018

³⁹⁷ Criminal Law, 1st version, adopted on 23 November 1989 by National Assembly, promulgated by Degree of State President, No.04/90, dated on 9 January 1990

³⁹⁸ Art 51 and the individual crimes as prescribed in the particular part of the 2017 criminal code

³⁹⁹ Criminal Code, 2017

The data used in the present dissertation were collected in December 2018 in Vientiane. The interviews were conducted with twenty-five high ranking governmental officials who receive an explanation of the purpose and significance of the interview.⁴⁰⁰ Each of the officials were asked three questions in order to reveal their attitudes on the present legal status of this form of punishment in Laos. The interviewees were asked whether they supported the death penalty or not; their reasoning for either position; and whether their view would change in the future. The responses revealed support and non-support for the present statutory provisions of the death penalty; attitude concerning support or non-support for the continuation of *de facto* moratorium; and attitudes for or against the possible *de Jure* abolition of the death penalty in the future.

The results from the interview found that 17 of the 25 supported the death penalty in some form while the remaining 8 stated they not support this form of punishment. While a majority supported the death penalty in some form, the result also suggests that some of these Laotian high governmental officials' support both (1) the existence of capital punishment on the books and, simultaneously, (2) non-execution of death penalty in practice. This indicates a strong consensus for maintaining *de facto moratorium*. Meanwhile, only a minority of proponents of the statutory death penalty felt that absence of the death execution in practice might harm the reputation of the rule of law in Laos. Only a handful of proponents continued support for using capital punishment for drug-related crimes.⁴⁰¹

On the other hand, the interviews discovered that a very small number opposed the statutory death penalty. This small group not only rejected the present condition of *de facto moratorium*, they instead supported ratification of the *Second Optional Protocol* to the ICCPR requiring the complete abolition of the death penalty in Laos. Almost the same number of proponents and opponents asserted that they would like to see the death sentence abolished in the future. One third of respondents stated that in the current mode, in which the courts produce a sentence of death but do not execute it in practice, the scenario was a preferable for Laos. Respondents who supported the *de facto* abolition

⁴⁰⁰ The participants were clearly informed that the interview was anonymous, and their participation was a subject of a voluntary will. Most of the respondents did not mind the interview being audio recorded.

widely believed that non-execution in practice had ties with “Laotian society’s peaceful and non-violent Buddhist culture.”⁴⁰²

Prof. Ket⁴⁰³ believes that the death penalty should remain in the law as long as Lao society continues to face grave threats and dangers from crimes such as murder, drug trafficking, and others. In addition, former Permanent Committee and Law Committee Chairman confirmed that the death penalty remains important for deterring the most heinous crimes and could emphasize public awareness of crimes.

Some of those who opposed the death penalty believed that some people in Laos would reject the death penalty as result of the influences from Buddhism. Such views could be tied to the Buddhist Kingdom that historically existed in Laos a long time ago. Some academic sources suggest that historically, religions such as Buddhism had played an essential role in the abolition of the death penalty in some Asian countries.⁴⁰⁴ However, in the Laotian context, relying on religion while discussing such a sensitive problem as the death penalty appears too easy and risky. None of the respondents could specify or exactly cited what aspect of Buddhist philosophy speaks about the context of the death penalty.⁴⁰⁵ Respondents did not offer clear insights with regards to what exactly Buddhism teaches about the subject, or how locals tied these ideas t to killing by the state.⁴⁰⁶ Thus, such rationalization on religious grounds could not be substantiated.

There are several last points regarding this limited field of work. First, these interviews were collected from a limited number of people within the governmental sector, hence it is not a representation of public opinion. Second, the interviews provided some insight into the attitudes and opinions of those involved in making and carrying out the laws. Third, while none of the interviewees made any reference to the international human standards, clearly there is no consensus on whether the death penalty should be activated or abolished. Last, though the interviews do not offer any clear concrete picture about

⁴⁰² A detailed interview charts are available further in Aziz Ismatov, *The Social Justice and the Death Penalty within the Structures of the Socialist Legal Systems in ASEAN: A Case of Vietnam and Laos. Current Legal Issues in Asian Countries (III)*. Korea Legislation Research Institute Asia Legal Information Network. 2019, 151.

⁴⁰³ Former Supreme Court President (1990-2000), former Deputy Minister of Justice (2000-2019)

⁴⁰⁴ Shanhe Jiang, Rebecca Pilot & Toyoji Saito, *Why Japanese Support the Death Penalty*, 20 *International Criminal*

Justice Review 302, 306 (2010).

⁴⁰⁵ Aziz, *Social Justice*, 151.

⁴⁰⁶ *Ibid*, 153.

public attitudes nor a clear answer to the underlying rationalization for or against the death penalty among government officials in Laos, they contribute in terms of bringing forward a narrow opinion that may be evolved in future research.

5.4.3 Increasing the Party's Leadership at Each Level to Prevent and Solve the Drug Problem

It is difficult to draw definite conclusions regarding the reasons for the maintenance or abolition of the death penalty in Lao PDR. According to the Criminal Procedure Law, the execution must take place.⁴⁰⁷ In actuality, the Lao people are still expecting the actual execution, which has not occurred for a very long time.⁴⁰⁸ With the implementation of the new Order in 2021,⁴⁰⁹ the government has increased its enforcement of the death penalty, especially for drug crimes. In accordance with this Order, the Government of the Lao PDR will continue to implement the death penalty and examine its effectiveness.⁴¹⁰ To clarify the formal commitment of the government and the social sentiments of the people, the Lao PDR must overcome a number of obstacles and elements that are unique to the Lao PDR's legal system and social psychology.

Under the Order, “the government will continue to reinforce the death penalty and carry out actual executions, especially drug-related crimes.” However, “the action must be reasonable, fair, and effective.”⁴¹¹ Meanwhile, the Government of Lao PDR has officially declared the drug problem to be a “National Agenda.”⁴¹² In this regard, the Lao PDR must strictly punish drug criminals in accordance with the law. These commitments reflect the government's determination to uphold the death penalty and ensure that it is carried out in a strict manner.

The Order, however, may conflict with the Human Rights committee calling for Lao PDR to abolish the death penalty and its commitment to the ICCPR 2nd Optional

⁴⁰⁷ Law on Criminal Procedure, art. 255, 256, 2017

⁴⁰⁸ Since the first criminal law was adopted in 1989

⁴⁰⁹ Order of the Central Political Bureau of the Party on increasing the Party's leadership at each level to prevent and solve the drug problem), No. 02, dated 26 June 2021

⁴¹⁰ Ibid, 3.2

⁴¹¹ Ibid

⁴¹² National Assembly 2nd Session, November 2021

Protocol.⁴¹³ The main concern is over the interpretation of the term “most serious crime” as stated in the Lao *Criminal Code* and in relation to the meaning provided by the Human Rights Committee. For instance, the current *Criminal Code* has provided 12 articles concerned with the death penalty and its implementation in the *Law on Criminal Procedure*. The Lao PDR never officially announced a policy of de-facto abolition⁴¹⁴ Though recognized in the international community, the term is inaccurate to the case of Laos.

In addition to the preceding situation, the judge in the Criminal Chamber of the Vientiane Capital People's court stated that his training required him to enforce the law without sympathy for those who break the law and commit criminal offenses. However, he may consider it a sin each time he sits on the bench to decide a death penalty case. Nevertheless, according to the perspectives of the Lao PDR, the state should retain the death penalty in policy and law and carried out. Thus, despite pressure from the international community and internal controversy for a variety of reasons, the death penalty is likely to remain in place in the Lao PDR.

Over the past three decades,⁴¹⁵ however, the execution of the death penalty in Lao PDR has demonstrated a guarantee of possible implementation despite legal constraints.⁴¹⁶ On the one hand, these measures show that, the law serves justice. The criminals deserve to be punished, but the punishment is not over. On the other hand, existing situation on death penalty in Laos shows non-compliance with the legal text and court's decision.⁴¹⁷ While the government has not implemented the death penalty in practice, it never formally stated that there was a moratorium. This raises the issue of whether the government would reinstate the use of the death penalty to make it consistent with a black letter law, continue de facto moratorium, or abolish the death penalty completely.

⁴¹³ Concluding Observations on the initial report of the Lao PDR, The Committee considered the initial report of the Lao People's Democratic Republic (CCPR/C/LAO/1) at its 3504th and 3505th meetings (see CCPR/C/SR.3504 and 3505), held on 11 and 12 July 2018. At its 3519th meeting, held on 23 July 2018, it adopted the present concluding observations, dated 23 November 2018, 3.

⁴¹⁴ CCPR/C/LAO/CO/1, dated on 23 November 2018, Concluding observations on the initial report of the Lao People's Democratic Republic

⁴¹⁵ Since the last execution on 1989

⁴¹⁶ Criminal Law, 2017 and Criminal Procedure Law, art. 255, 256, 2017

⁴¹⁷ The court sentenced the death penalty, but no execution

In sum, Laos remains uncertain about the death penalty. One view is that the law should uphold the death penalty for only the most serious crimes. These penalties include for drug cases, which currently account for a high proportion. On the other hand, Laos will most likely continue with sentencing but not actually carrying out the death penalty. This issue is still challenging and difficult for Lao PDR to find a solution that is consistent with the meaning of Article 6 of the ICCPR. However, the criminal law of the Lao PDR should define the scope of the most serious crimes.

Therefore, the Lao People's Democratic Republic will continue to carry out the death penalty in, but on the basis of reasonable consideration, in accordance with Lao law and the ICCPR. This will begin with a shared understanding of the severity of the most heinous crimes, the improvement of the criminal law, and the enforcement of the law, and will gradually lead to the abolition of the death penalty. This procedure must take into account the legal context of neighboring nations, international conditions, and the appropriate timing. The critical concern is that intentional homicides must be punished with the death penalty, while drug and other crimes must be given reasonable consideration.

Summary and Concluding Remarks

Over the last few decades, Laos has wrestled with whether or not they should activate the death penalty in their country. In addition, the Laotian government has been pressured by the HRC and other countries in the UPR process to formally abolish the death penalty. However, the government has been concerned with the persistent problem of drug trafficking in the region. According to the government, drug-related crimes remain a threat to the Laos and the region. The National Assembly members wanted the death penalty retained for drug trafficking, which they said brought harm to families and threatened national security and economic development growth. While interviews conducted for this study found no clear consensus for activating the death penalty among governmental officials, most of the respondents concurred that this form of punishment was still necessary.

At this point of time, there remains an unwillingness on both sides to hold effective dialogue and reach a compromise. From the point of view of the HRC, Laos should be trying to revise how they apply the death penalty or abolish it completely. Meanwhile,

Laos continues to defend the present law on the books with regard to the use of such punishment, and remains indifferent to the HRC' numerous recommendations on formal abolition

According to the current Lao criminal policy regarding the death penalty, this form punishment is difficult and impossible to implement in practice. Over the past three decades, no death penalty cases have been carried out. Therefore, there is no justification for the Lao government to reinstate the death penalty. While the issue of human rights and the trend toward abolition of the death penalty is a responsibility of the ICCPR membership, including Lao PDR the courts in Laos have convicted a majority of death row inmates for drug-related crimes. The Lao people also believe in Buddhism because they fear sin, which is a fundamental religious belief that does not involve the use of lethal force. In this regard, the new Order might include phrases such as "reasonable, fair, and effective" to reflect such sentiments.

The phrase "the most serious crime" serve as a common basis of discussion on which crimes deserve death penalty at the level of provision of law. The socialist ideology is still dominant as formal basis of law, but the traditional legal awareness in the society cannot be disregarded in actual implementation of law. In addition, Lao PDR has to seriously consider the authoritative interpretation of the HRCof ICCPR as a contracting party to it.

Conclusion

In Laos, the death penalty was introduced by revision of *Criminal Law* in 1970. After establishing the Lao PDR in 1975, Prime Minister issued Order No.53/PO on arresting, investigation, and court decisions in 1976. This order defined crimes against national security and provided the death penalty in such cases. In 1989, Lao PDR promulgated the *Criminal Law* in which 11 crimes were listed as punishable with the death penalty. Later, the death penalty for drug-related crimes was introduced by a reform of *Criminal Law* in 2001. In 2005, another reform extended the death penalty to 18 criminal offenses. The *2017 Criminal Code* identified 12 death penalty circumstances, and 3 of them were drug-related crimes. However, the execution of the death penalty was never carried out.

This study reviewed and critically analyzed the relevant documents at international, regional, and national levels concerning the death penalty in Lao PDR. The paper draws on seven main conclusions.

First, the death penalty in Laos is based on the concept of socialist law. Based on such views, despite the influence of Western law since Lao PDR became a party to the ICCPR, it is difficult to reach a unified and consistent understanding, especially on the meaning of the most serious crimes. As a result, drug-related offenses have still been categorized as the most serious crimes, and the death penalty will be applied.

Second, the current criminal code specifies 12 crimes for which the death penalty is applicable, and the implementation of the death penalty is clearly defined in the law on criminal procedure. Still, there has been no execution for more than thirty years. Consequently, it can be characterized as a *de facto* informal moratorium. In the interim, the State President has issued 53 pardon decrees for death row inmates between 2008 and April 2021, which do not cover all cases where executions have been stopped.

Third, the Lao PDR did not carry out the death penalty executions. This is because any intentional killing of a human being is believed to be sinful according to the rules of Buddhism or other beliefs among the Lao people. However, most Laotians also believe that the death penalty is necessary to deter serious crimes. We have to point out somehow complicated and mutually contradictory feelings among the Lao people.

Fourth, the geopolitical context exacerbates the dilemma above. Some Northern provinces of the Lao PDR are part of the Golden Triangle. Thus, providing the death penalty for drug-related crimes seems reasonable to deal with the increase in drug trafficking in this region. China, Myanmar, Thailand, and Vietnam still retain the death penalty as legal deterrence. Comparatively, the Lao PDR Criminal Law provides the death penalty less severely for drug-related crimes than in neighboring nations. For example, the Lao PDR imposes the death penalty for more than 500 grams of heroin, while 3 grams in Myanmar and Thailand, 50 grams in China, and 100 grams in Vietnam. Moreover, China and Vietnam have recorded the most executions for drug-related crimes yearly (see Chapter III and Chapter IV).

Fifth, Lao PDR may be in the process of abolishing the death penalty if and when sufficient attention is paid to geopolitical and domestic considerations. It is, however, too optimistic to consider that the death penalty will be formally abolished in due course in the near future. Most National Assembly members voted to retain the death penalty for certain national security and drug-related crimes in the 2017 Criminal Code. The punishment is a legal deterrent measure, as well as that, along with the political strategy. The Government of the Lao PDR issued a notice to maintain the death penalty and “recommended to execute, but it is necessary to consider how to make the method of execution” formal and consistent. However, it should be reminded that this Government Notice may conflict with General Comment No. 36, paragraph 35, and article 6.2 of the ICCPR.

Sixth, based on the findings of this dissertation, it is highly recommended that the Lao government implement and strengthen alternative strategies to combat drug abuse. Among these alternatives is providing vocational training for rural youth, the condition of permanent professional livelihoods, and enhancing cooperation for drug control and oversight in neighboring countries.

Seventh, the government must coordinate and cooperate with the drug policy in ASEAN and the Greater Mekong Subregion area to reduce drug trafficking. For instance, the ASEAN Work Plan on Securing Communities Against Illicit Drugs 2016-2025 has established working groups such as Preventive Education, Treatment and Rehabilitation, Law Enforcement, Research, and Alternative Development. Nonetheless, the Lao

Government has issued the National Drug Control Master Plan for (2016-2020), and in 2021, National Agenda for dealing with drug issues is setting up.

Before concluding the dissertation, I would like to clarify my position regarding the current status of the death penalty in Lao PDR. As a legal scholar, I feel obligated to describe the suspension of the death penalty as extralegal. Even after a pardon was denied, the statutory provisions regarding establishing execution committees are not observed. In principle, such illegality should be removed from actual practice. I referred to such a possibility above, but at the same time, I added my suggestion to introduce discretionary power for the Presidents of the Court to establish the committees. Such proposals, however important but rather technical, could only provide a solution to secure legal and textual consistency.

I am convinced that the abolition, at least in the long run, is in line with the Lao people's desires. At the same time, it must be acknowledged that significant structural obstacles must be eliminated to achieve this objective. I would also like to emphasize that the political will of government leaders to observe their legal obligations, including Article 6 of the ICCPR, would not be sufficient to overcome these structural challenges. We can address such difficulties through multifaceted efforts in cooperation with neighboring countries such as Vietnam and China. Hence, I should add that, because it may take so much time, the key will be to keep our people's firm determination to move to abolition.

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Appendix I

Article 6 of the International Covenant on Civil and Political Rights

2.1 Drafting History

Generally speaking, International Covenant on Civil and Political Rights (hereinafter ICCPR) was adopted by the General Assembly of the United Nations on 19 December 1966. This Covenant has 53 articles. However, in this section of the paper would like to focus mainly on Article 6. This article has 6 paragraphs, which states that

1. 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.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Moreover, this section will generate the history of drafting the ICCPR in order to understand the how and why this covenant was drafted and who played the main role in terms of drafting for example in order to understand the history of drafting process, inputs that influence to the contents of the ICCPR and how ICCPR was drafted by the

Committee and accepted by the world to be one of the most importance legal binding document for the nation in worldwide in terms of rights protecting and abolishing of death penalty in the case of such country environment is allowed.

The ICCPR has long history of discussion, one said that this covenant using approximately 20 years for negotiation between the drafter commissions. The ICCPR was drafted together with the International Covenant on Economics, Social and Cultural Rights (ICESCR), when combining the ICCPR, ICESCR and UDHR together, people always called “International Bill of Rights”. According to the available document, the drafter commissions of the ICCPR is the same team with the UDHR commission, which includes but not limited to United States of America, United Kingdom, Australia, Chile, France, USSR, China, Canada, Lebanon. This commission is known in the name of United Nations Commission on Human Rights, this commission was established in 1946 which has the right to draft international legal to protect the fundamental rights and freedoms. During the drafting of UDHR, the General Assembly of the United Nations asked the commission to add some article which relates to economic, social and cultural rights as well as civil and political rights. The reasons to add these articles into UDHR because some countries did not recognize civil and political rights as human rights. In 1966, the Third Committee completed the draft of ICCPR and submitted to the General Assembly of the United Nations, then the International Covenant on Civil and Political Rights was adopted with a vote of 106 to 0 and its first Optional Protocol was adopted with a vote of 66 to 2 with 38 abstentions.^{418,419}

⁴¹⁸ <<http://humanrightscommitments.ca/2015/11/history-of-the-international-covenant-on-civil-and-political-rights/>>, accessed 13 January 2020.

⁴¹⁹ Preparation of the now two draft covenants continued until 1962, first by the Commission and then by the United Nations Third Committee (Social, Humanitarian and Cultural matters). In December 1963, “the General Assembly invited all Governments to consider the text of the articles adopted by the Third Committee.” However, it was not until 1966 that the Third Committee completed the drafting of both covenants and submitted them to the General Assembly. The two covenants, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, along with an initial Optional Protocol to the latter, were adopted by the General Assembly on 16 December 1966. The International Covenant on Civil and Political Rights was adopted with a vote of 106 to 0 and its first Optional Protocol was adopted with a vote of 66 to 2 with 38 abstentions. <<http://humanrightscommitments.ca/2015/11/history-of-the-international-covenant-on-civil-and-political-rights/>>, accessed 13 January 2020.)

Sarah Joseph and Melissa Castan mentioned that the civil and political rights are mainly brought from the western liberal philosophies of the seventeen and eighteen centuries mainly from the concept of enlightenment of French philosophers. These rights are also stated in the United States Declaration of Independence in 1776 about the equal and inalienable rights which includes life, liberty and pursuit of happiness.⁴²⁰ From their point of views, the main of idea of civil and political rights are stemmed from the western concepts of protection of rights while there is not creditable document that mention about the concept of Eastern like China drafting committee shown in the covenant.

According to Michael O'Flaherty and Liz Heffernan, the ICCPR is developed via the vigorously debate of the UDHR drafting committee at San Francisco Conference of 1945, this Covenant come after the UDHR but more specifically on the political and civil rights. The ICCPR was drafted in 1954 and sent the text to General Assembly of UN for consideration, then the General Assembly take approximately ten years of working on it, after that the resolution number 2200 (XI) of 16 December 1966, the General Assembly adopted and opened for signature the ICCPR and first optional protocol together with the International Covenant on Economic, Social and Cultural Rights (ICESCR). After promulgation of UDHR, ICCPR and ICESCR, it could be said that the International Bill of Rights has been finally promulgated.⁴²¹

After the promulgation of ICCPR, it was reported that on 1 January 1994, there are one hundred and twenty-five States has been ratified and many numbers of the Human Rights Committee were appointed by the State's parties. While the committee which responses to the ICCPR has met three times a year in order to review the State's report and individual petitions. Beth Simmons proves that the ICCPR used 18 years to agree upon a binding treaty on civil and political rights because its contents seem to be contained in the UDHR.⁴²²

⁴²⁰ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights, Cases, Materials, and Commentary*, Third Edition, 2013:5.

⁴²¹ Michael O'Flaherty and Liz Heffernan, *International Covenant on Civil and Political Rights: International Human Rights Law in Ireland*, Brehon Publishing, Dublin, 1995:2.

⁴²² Simmons, Beth. 2009. Civil rights in international law: Compliance with aspects of the "International Bill of Rights." *Indiana Journal of Global Legal Studies* 16(2): 437-481.

The ICCPR has long term of drafting which starts from the first Commission on Human Rights session in 1947 to twenty-first session of the General Assembly of the UN in 1966, the Third Committee⁴²³ completed the drafting of the Covenant. After discussions in plenary by the invited state members of the UN, then the ICCPR was voted as 106 to 0, while the Optional of the ICCPR with a vote to 66 to 2, with 38 abstentions.⁴²⁴ This is importance to note that the Third Committee of the UNGA response for the promoting and protecting human rights and publishing annual report of the Human Rights Council. This Committee have the human rights expertise to address the report. The Third Committee of the UNGA includes 193 Member States of the UN. The UNGA divides into six main committees namely First Committee responses for Disarmament and International Security, Second Committee called Economic and Financial, Third Committee responses to Social, Humanitarian and Cultural, Fourth Committee is Special Political and Decolonization, Fifth Committee is Administrative and Budgetary committee and Sixth Committee is Legal Committee.⁴²⁵

Christian Tomuschat said that the ICCPR reflects all of the traditional human rights as they are known from historic documents such as the First Ten Amendments to the Constitution of the United States (1789/1791) and the “French Déclaration des droits de

⁴²³ The Third Committee of the General Assembly at its seventy-fourth session, is chaired by **H.E. Christian Braun (Luxembourg)**. The General Assembly allocates to the Third Committee, agenda items relating to a range of social, humanitarian affairs and human rights issues that affect people all over the world. As in previous sessions, an important part of the work of the Committee will focus on the examination of human rights questions, including reports of the special procedures of the Human Rights Council which was established in 2006. In October 2019, the Committee will hear and interact with special rapporteurs, independent experts, and chairs of working groups as mandated by the Human Rights Council. The Committee also discusses questions relating to the advancement of women, the protection of children, indigenous issues, the treatment of refugees, the promotion of fundamental freedoms through the elimination of racism and racial discrimination, and the right to self-determination. The Committee also addresses important social development questions such as issues related to youth, family, ageing, persons with disabilities, crime prevention, criminal justice, and international drug control. At the seventy-third session of the General Assembly, the Third Committee considered over 60 draft resolutions, more than half of which were submitted under the human rights agenda item alone. These included three so-called country-specific resolutions on human rights situations. The Third Committee is expected to consider a similar number of draft resolutions during the present session of the General Assembly (<<https://www.un.org/en/ga/third/>. >, accessed on 6 February 2020).

⁴²⁴< <https://legal.un.org/avl/ha/iccpr/iccpr.html>. >, accessed, January 20, 2020.

⁴²⁵ Eleanor Openshaw and Madeleine Sinclair, Third Committee of the United Nations General Assembly a Practical Guide for NGOs. International Service for Human Rights, Australia Government, 2017:9.

l’homme et du citoyen (1789).” Part III of the ICCPR contents the banning on torture or other cruel.⁴²⁶

The ICCPR requires all government that ratify to take administrative, judicial and legislative measures to protect the rights as provided in the treaty and to provide an effective remedy.⁴²⁷ In order to guarantee that the ratified government take measures to protect the basic rights such as the right to life and human dignity; equality before the law; freedom of speech, assembly, and association; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; right family life and family unity; and minority rights, the Human Rights Committee was established under the UN which includes the members from Albania, Canada, Chile, Egypt, France, Germany, Greece, Guyana, Israel, Japan, Latvia, Mauritania, Paraguay, Portugal, Slovenia, South Africa, Tunisia, and Uganda, as of January 2019. This committee has the rights to monitor the implementation of the ICCPR. The committee has 18 independent experts with recognized competence in the field of human rights and the committee members are elected for a term of four years and must be from countries that have ratified the ICCPR.⁴²⁸ It summary, the ICCPR was adopted on 16 December 1966 by UN and entered into force on 23 March 1976. The main aims of the IPPRC is ensuring the protection of civil and political rights, which includes the right of peoples to self-determination, the right to life, freedom from torture and from slavery, freedom from arbitrary arrest or detention, the right to a fair trial, freedom of thought, conscience, religion, expression and association, the right to political participation and equality before the law. In conclusion, the ICCPR drafting divides into five steps namely draft, adopt, sign, ratify and enter into force.⁴²⁹

⁴²⁶ Christian Tomuschat, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, >, <https://legal.un.org/avl/pdf/ha/iccpr/iccpr_e.pdf. >, accessed 8 February 2020.

⁴²⁷ <<https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>. >, accessed 31 March 2020.

⁴²⁸ Ibid.

⁴²⁹ **Drafted** by working groups. The UN General Assembly commissions working groups consisting of representatives of UN member states, as well as representatives of intergovernmental and *nongovernmental organizations (NGOs)*. **Adopted** by vote of the UN General Assembly. **Signed** by member states. When member states sign the convention, they are indicating that they have begun the process required by their government for ratification. In signing, they are also agreeing to refrain from acts that would be contrary to the objectives of the convention. *Ratified* by member states. When a member state ratifies a convention, it signifies its intention to comply with the specific provisions and obligations of the document. It takes on the responsibility to see that its national laws are in agreement

While the Report of the Human Rights Council Number A/HRC/30/18, dated 16 July 2015 mentions about the intension of the ICPR drafter committee that

“The drafters of the International Covenant on Civil and Political Rights already paved the way towards the abolition of the death penalty in 1966 by mentioning the death penalty as an exception to the right to life, which should in no way be “invoked to delay or to prevent the abolition of capital punishment” (art. 6 (6)) and by establishing stringent conditions under which it could be used. Trends with regard to the implementation of the stringent conditions contained in article 6 (2–5) can be gleaned from recent quinquennial and annual reports of the Secretary-General on the use of the death penalty”.⁴³⁰

As a result, drafters of the ICCPR would like to limit the capital punishment to those who are considered that their offenses are not too serious mainly for those person who has below eighteen years of age and pregnant women because these two kind of persons are considered as the child while the pregnant women also have unborn child which will die if his or her mother was killed.

2.2 Textual Structure

The ICCPR divides into six parts and 52 articles. In this part of dissertation will be focused on article 6, which contents that

1. 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.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present

with the convention. There is also a process by which states can ratify the convention, but also indicate their *reservations* about specific articles. **Entered into force.** A convention goes into effect when a certain number of member states have ratified it. For example, the *ICCPR* was adopted in 1966; however, they did not enter into force until 1976 when the specified number of 35 member states had ratified them.⁴³⁰ Report of the Human Rights Council Number A/HRC/30/18, dated 16 July 2015, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Yearly supplement of the Secretary-General to his quinquennial report on capital punishment. Page 5.

Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

From the provision of this article, the main textual includes 1). right to life with protecting by law, 2). abolition of death penalty, or imposing death penalty for the most serious crimes, 3). right to seek pardon, and 4). prohibition of impose of death penalty to person below eighteen years old or pregnant women. The following paragraphs will examine four main themes of the Article 6 of the ICCPR.

The right to life is the fundamental rights of human being, this right also provided in the UDHR contents mainly article 3 of the UDHR states that “Everyone has the right to life, liberty and security of person”. Rights to life are expressed broadly concepts, which many countries’ constitutions are obligated to protect. The rights to life are including, but not limited to right to be alive in good environment, rights of free of speech, get married, hold nationality, rights to adjustment to degradation of environment or climate change or unsustainable development. This is because from the date of approval of the UDHR in 1948 to present time, there are many things happened which led to secure and threat to the rights of life.⁴³¹

⁴³¹ The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World. Edited by Gordon Brown. UK, Cambridge: Open Book Publishers, 2016:32.

Article 6 of the ICCPR mentions about the abolition of death penalty, or imposing death penalty for the most serious crimes. Which means that abolition of the death penalty is the appreciation by this article. However, if the death penalty is very important to use or State Member cannot abolish, then imposing death penalty for the most serious crimes mainly only genocide cases. From 1951, worldwide tries to anti-genocide, for example, article 1 of Convention on the Prevention and Punishment of the Crime of Genocide states that “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”.⁴³² Meanwhile, article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide explains that in the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

3). Right to seek pardon, this right is occurred whenever the people sentenced to death seek for pardons according to legal system of each country before the death penalty will be applied to him/her. In some country and legal system, for example in the case of China after authorizing a death sentence, the Supreme People’s Court should notify individuals of their right to apply to the Legal Committee of the National People’s Congress for pardons. If an individual decides to apply, then the president of the Supreme People’s Court should delay signing their execution warrant until a decision is made. Pardons are a political remedy that exists outside the judicial process. They allow judicial outcomes to be adjusted in ways that realize political or diplomatic interests without directly manipulating the judicial process. Pardons might best be used

⁴³² Convention on the Prevention and Punishment of the Crime of Genocide, approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII.

in cases where the death penalty is indicated as a matter of law but that the interests of the state or society would be better served by not carrying out an execution.⁴³³

Meanwhile, in the USA for example, pardon rights are belonged to the President of the USA for all criminal offenses if such offenses are decided by the United States District Courts exemption from the military offenses and state criminal offense. Sentenced person can seek pardon as provided by the USA Constitution, if one would like to seek for pardon, they must submit petitions by email or mail to the Office of the Pardon Attorney. However, a person who would like to submit petition, he must wait for five years or serve as prison for a five years terms, in the petition, relevance person should provide specific purpose by explain that why you are seeking pardon and attach any relevance documentary to be used as evidence that indicates how a pardon will help you accomplish that purpose.⁴³⁴

4). prohibition of impose of death penalty to person below eighteen years old or pregnant women.

Under the Convention on the Rights of the Child which adopt on 20 November 1989, article 37 (a) provides that “Children who are accused of breaking the law should not be killed, tortured, treated cruelly, put in prison forever, or put in prison with adults. Prison should always be the last choice and only for the shortest possible time. Children in prison should have legal help and be able to stay in contact with their family”. According to UNICEF annual report of 2018 states that “In countries including the Democratic Republic of the Congo, Nigeria, the Philippines and Somalia, 13,600 former child soldiers were released or reintegrated with their families. All of them received care and services”.⁴³⁵ As a result, “in June 2017, fifteen states authorized the

⁴³³The Right to Seek Pardon: From Constitution to Procedural Law, See:

<<https://www.duihuahrjournal.org/2011/12/right-to-seek-pardon-from-constitution.html>>, accessed 24 March 2020.

⁴³⁴<[h https://www.justice.gov/pardon/pardon-information-and-instructions.](https://www.justice.gov/pardon/pardon-information-and-instructions)>, accessed on 20 April 2020.

⁴³⁵ United Nations Children’s Fund, annual report, 2018. New York, 2019: 28.

death penalty for the murder of a child victim, and four states that later abolished the death penalty also had a child-victim aggravating circumstance.”⁴³⁶

Death penalty for man and women are prohibited by the laws and destroy or kill human being, confirmed by Okpara:

*‘The death penalty is abhorrent to civilized sentiments. It is both an inhuman and a degrading punishment that denies a person his status as a human being and it is in conflict with the right to human dignity. It is inhuman to terminate human life by killing. The fact that it is inflicted as a punishment for crime does not make it less so. Death is a denial of a person’s humanity because it destroys his very existence, with all the rights inherent in human existence, including the right to relief where conviction and sentence have been wrongfully imposed. The process of carrying out a death sentence with the untenable long wait between the imposition of sentence and the actual infliction of death is often degrading and brutalizing to the human spirit as to constitute psychological torture.’*⁴³⁷

Meanwhile, Professor Ben Nwabueze strongly condemned death penalty when he said that it is inhuman to terminate human existence by killing and the fact that it is inflicted as a punishment for crime does not make it any less so. If it is not inhuman and even if some method of making it completely painless could be devised, it is still degrading and therefore a violation of the constitutional prohibition against degrading treatment.⁴³⁸

In Nigeria, for example, death penalty is a constitutionally permissible form of punishment by virtue of the Constitution of the Federal Republic of Nigeria. In more detail, pregnant women is a clear indication that pregnant women are exempted from the death penalty because the law on Administration of Criminal Justice Act 2015 section 404 provides that where a woman found guilty of a capital offence is pregnant,

⁴³⁶<<https://deathpenaltyinfo.org/stories/use-of-the-death-penalty-for-killing-a-child-victim>>, accessed on 19 April 2020.

⁴³⁷ Okpara O., *Human Rights: Law & Practice in Nigeria*, 1st Ed.,(Enugu: Chenglo Ltd., 2005), p 127.

⁴³⁸ Nwabueze B. O., *The Presidential Constitution of Nigeria*, 1st Ed.,(London: C. Hurst & Co., 1981), p 411.

the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned.⁴³⁹

2.3 Interpretation of the Article of the ICCPR

After promulgation of the ICCPR, many countries and international law experts tried to interpret the ICCPR different from one to one, for example, Aulona said that the ICCPR offered to optional, first is establishing an individual complaints mechanism, while other is abolition the death penalty.⁴⁴⁰ The main or second Optional Protocol of the ICCPR is aimed to abolition of the death penalty.⁴⁴¹

According to Christian Tomuschat, the ICCPR is great impact to national level which many countries try to frame the fundamental rights of their own citizen. In many countries, administrative authorities and courts have to follow the applicable of international guarantees whenever interpreting the national constitution. Christian Tomuschat also said that

“In other countries, the ICCPR has even been given the legal force of a provision of constitutional or quasi-constitutional rank (e.g., article 15, paragraph 4, of the Constitution of the Russian Federation). These legal techniques are not automatically successful, since, as a rule, national judges are not very familiar with the guarantees laid down in international human rights instruments and are more often than not reluctant to accord them precedence over the applicable national laws and regulations”.⁴⁴²

Na Jiang explained the ICCPR and China interpretation that the ICCPR offered obligation on civil and political rights to the State parties. While article 6, 7, 14 and 15 are involve directly and indirectly to the death penalty. The content of article 6 mention directly right to life, which explain refrain of life deprivation and restrictive of death

⁴³⁹ Peter AnichebeOkakpu, Death Penalty of Pregnant Women; A Double Jeopardy, Legal Aid Oyo Journal of Legal Issue, Vol.1, Issue 1, 2017. Pp. 39.

⁴⁴⁰ Aulona Haxhiraj, The covenant on civil and political rights in Juridical Tribune, vol 3:2, December 2013: 308.

⁴⁴¹ Michael O’Flaherty and Liz Heffernan, International Covenant on Civil and Political Rights: International Human Rights Law in Ireland, Brehon Publishing, Dublin, 1995:3.

⁴⁴² Christian Tomuschat, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, <https://legal.un.org/avl/pdf/ha/iccpr/iccpr_e.pdf>, accessed 8 February 2020.

penalty by the authority of the State, and death penalty abolition is desirable by any kinds of criminal offences in order to supreme of this right.⁴⁴³ Na Jiang also explained that the article 7 provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation, article 14 provides the equally before the courts and tribunal and article 15 provides similar contents to the article 6, 7 and 14 which states that “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. China has to accepted four articles of the ICCPR concerning the death penalty after ratifying.⁴⁴⁴

Beth Simmons explains that civil and political rights of individual is core and important rights which addresses by the international human rights treaties called International Bill of Rights especially ICCPR. The contents of ICCPR were recognized as the term “enlightenment rights” of the individual, while the political rights are the rights that require government to abstain from the denigrating. However, the rights under the ICCPR are not absolutely this also means that the rights need to be limited whenever necessary to safeguard of certain public or State interests. In other word, State has the rights to reservations of the rights as provided in the ICCPR because the rights in the Covenant might sensitive to culture concerning the appropriate relationship between the individual, society and the State. Different country has different terms of explain the rights under the ICCPR, for example civil rights of Western might different from Eastern countries. Under the requirement of the ICCPR article 28, State members have to establish the Human Rights Committee as the facilitate enforcement of the obligations and enhancing the mechanisms of accountability.⁴⁴⁵

⁴⁴³ Na Jiang, China and International Human Rights, Harsh Punishments in the Context of the International Covenant on Civil and Political Rights, 2014: 61.

⁴⁴⁴ Ibid.

⁴⁴⁵ Simmons, Beth. 2009. Civil rights in international law: Compliance with aspects of the "International Bill of Rights." Indiana Journal of Global Legal Studies 16(2): 437-481.

Beth Simmons mentioned that:

“The ICCPR is not the only treaty to have addressed civil and political rights, but it is certainly the most central. Many of these rights have also been developed at the regional level, and in Europe with accompanying institutions with real enforcement power. The first 18 Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) anticipates the civil and political rights covered by the ICCPR, and Section II establishes a regional court to assure enforcement. All of the first generation civil rights covered in the ICCPR are also detailed in the American Convention on Human Rights, book-ended by guarantees of juridical personhood and judicial protection of the rights contained in the treaty. The African Charter on Human and Peoples’ Rights (1981) contains in a more limited and contingent form some of the civil rights found in the ICCPR, including liberty and security of person, a right to a trial, freedom of conscience, free practice of religion, the right to disseminate one’s opinion, and free assembly and association. Practically the entire panoply of civil rights has been exported from the ICCPR to other international conventions aimed at protecting specific groups, including the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Rights of the Child. The cynical view flows from an emphasis on international enforcement, but a neglect of domestic politics. While it may be true that international actors – and especially other states – have little incentive to enforce their peer’s human rights commitments in any serious and systematic ways, domestic actors have a clear stake in their enforcement. For the locals, their rights and freedoms are at stake. Thus we should expect that if international law with respect to human rights is to be enforced, the most consistent pressure to do so should emanate from domestic politics.⁴⁴⁶

Anja Seibert-Fohr mentions that the ICCPR contains a comprehensive catalogue of civil and political rights which the State Member have accept to respect and to ensure that individuals’ rights are to become reality in domestic law and practice because the

⁴⁴⁶ *Ibid.*

Covenant sets the standards of legal system of the State parties. However, the ICCPR requires the domestic remedies in the case of death penalty.⁴⁴⁷

The prohibition of the death penalty is established under the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (adopted by General Assembly Res. 44/128 of 15 December 1989), Protocol No. 6 ECHR concerning the abolition of the death penalty in times of peace. However, in the reality, some of State members of the ICCPR still use death penalty to punish law violation person. In the real case for example *Lubuto v. Zambia*, the applicant was sentenced to death for aggravated robbery. The Supreme Court of Zambia dismissed his appeal. The applicant brought the case to the Human Rights Committee. He argued that the trial against him was unfair and that the death sentence subsequently imposed on him was disproportionate, since no one was killed or wounded during the robbery. Then the Human Rights Committee issued Communication No. 390/1990 and Viewed of 31 October 1995. Then the Human Rights Committee note that:

“The author was convicted and sentenced to death under a law that provides for the imposition of the death penalty for aggravated robbery in which fire arms are used. The issue that must accordingly be decided is whether the sentence in the instant case is compatible with Article 6, paragraph 2, of the Covenant, which allows for the imposition of the death penalty only for “the most serious crimes”. Considering that in this case use of firearms did not produce the death or wounding of any person and that the court could not under the law take these elements into account in imposing sentence, the Committee is of the view that the mandatory imposition of the death sentence under these circumstances violates Article 6, paragraph 2, of the Covenant. The Committee has noted the State party’s explanations concerning the delay in the trial proceedings against the author. The Committee acknowledges the difficult economic situation of the State party, but wishes to emphasize that the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe. Article 14, paragraph 3(c), states that all accused shall be entitled to be tried without delay, and this

⁴⁴⁷ Anja Seibert-Fohr, Domestic Implementation of the International Covenant on Civil and Political Rights Pursuant to its article 2 para.2, Max Planck Yearbook of United Nations Law, Volume 5, 2001, 399-472.

requirement applies equally to the right of review of conviction and sentence guaranteed by article 14, paragraph 5. The Committee considers that the period of eight years between the author's arrest in February 1980 and the final decision of the Supreme Court, dismissing his appeal, in February 1988, is incompatible with the requirements of article 14, paragraph 3(c). As regards the author's claim that he was heavily beaten and tortured upon arrest, the Committee notes that this allegation was before the judge who rejected it on the basis of the evidence. The Committee considers that the information before it is not sufficient to establish a violation of article 7 in the author's case. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 6, paragraph 2, and 14, paragraph 3(c), of the International Covenant on Civil and Political Rights. The Committee is of the view that Mr. Lubuto is entitled, under article 2, paragraph 3(a), of the Covenant to an appropriate and effective remedy, entailing a commutation of sentence. The State party is under an obligation to take appropriate measures to ensure that similar violations do not occur in the future. Although the author did not invoke a violation of Article 6, the Committee considered that from his allegations and the facts, it appeared that he was a victim of a violation by Zambia of, *inter alia*, Article 6 ICCPR. The Committee reads together Article 6 (right to life) and Article 14 (fair trial). Therefore, states must comply with the right to a fair trial when imposing the death penalty. As the Human Rights Committee has stated in several cases, Article 14 requires that the accused have legal representation, adequate time and facilities to prepare the defense and communicate with his or her lawyer".⁴⁴⁸

Another example is quoted from the Human Rights Committee Communication No. 845/1998, Views of 26 March 2002, between *Kennedy v. Trinidad and Tobago*. The committee inserted keywords on life, death penalty, pardon or commutation -trial within a reasonable time sentence and conviction reviewed by a higher tribunal, torture,

⁴⁴⁸<<http://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-life/the-right-not-to-be-arbitrarily-killed-by-the-state.>>, accessed on 27 April 2020.

cruel, inhuman treatment or punishment, degrading treatment or punishment, humane treatment, respect for dignity. Details of the case are explained as below:

“The Counsel has claimed that the mandatory character of the death sentence, and its application in Mr. Kennedy’s case, constitutes a violation of Articles 6(1), 7 and 14(1) of the Covenant. The State party has not addressed this claim. The Committee notes that the mandatory imposition of the death penalty under the laws of Trinidad and Tobago is based solely on the particular category of crime of which the accused person is found guilty. Once that category has been found to apply, no room is left to consider the personal circumstances of the accused or the particular circumstances of the offence. In the case of Trinidad and Tobago, the Committee notes that the death penalty is mandatory for murder, and that it may be and in fact must be imposed in situations where a person commits a felony involving personal violence and where this violence results even inadvertently in the death of the victim. The Committee considers that this system of mandatory capital punishment would deprive the author of his right to life, without considering whether, in the particular circumstances of the case, this exceptional form of punishment is compatible with the provisions of the Covenant. The Committee accordingly is of the opinion that there has been a violation of Article 6, paragraph 1, of the Covenant. The Committee has noted counsel’s claim that since Mr. Kennedy was at no stage heard in relation to his request for a pardon nor informed about the status of deliberations on this request, his right under Article 6, paragraph 4, of the Covenant, was violated. In other words, counsel contends that the exercise of the right to seek pardon or commutation of sentence should be governed by the procedural guarantees of Article 14 (see paragraph 3.8 above). The Committee observes, however, that the wording of Article 6, paragraph 4, does not prescribe a particular procedure for the modalities of the exercise of the prerogative of mercy. Accordingly, States parties retain discretion for spelling out the modalities of the exercise of the rights under Article 6, paragraph 4. It is not apparent that the procedure in place in Trinidad and Tobago and the modalities spelled out in Sections 87 to 89 of the Constitution are such as to effectively negate the right enshrined in Article 6, paragraph 4. In the circumstances, the Committee finds no violation of this provision.’

The comments of the Human Right Committee to the case No. 845/1998, Views of 26 March 2002, between Kennedy v. Trinidad and Tobago that

“The Committee found that mandatory capital punishment violated the right to life (Article 6(1) ICCPR). The Human Rights Committee had already taken the view that a mandatory death sentence for a broadly defined crime (murder) constitutes arbitrary deprivation of life in violation of Article 6(1) in Thompson (Eversley) v. St. Vincent and the Grenadines (Communication No. 806/1998, Views of 18 October 2000). Nonetheless, it is striking that in the Kennedy case, the Human Rights Committee did not agree that the guarantees of a fair trial (Article 14 ICCPR) apply in relation to the right to seek pardon or commutation in case of a death sentence Article 6(4) ICCPR.⁴⁴⁹

In conclusion, death penalty is harmful to human dignity, the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Then abolition of death penalty is stepping towards the enjoyment of the right to life which can explain in any enjoyment of life of people under the law. However, some member States of the ICCPR still apply capital punishment to person who identified as serious crime, which means that death penalty is controversial about the what level is identified as serious crime based on certain circumstances of criminal offenses.

⁴⁴⁹<http://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-life/the-right-not-to-be-arbitrarily-killed-by-the-state.>>, accessed on 27 April 2020.

Appendix II

The Cases of Philippines

Philippines Under the Contexts of its International Obligations

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly through resolution 2200A (XXI) on 16 December 1966, and in force from 23 March 1976.⁴⁵⁰ The Philippines is a signatory of this covenant.⁴⁵¹ Accordingly, Article 6 (par. 2) of the said covenant provides that: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”⁴⁵²

Veritably, this provision of Article 6 of the said covenant allows member states to impose the death penalty for only the “most serious crimes.” As a result, some countries, such as the Philippines, have interpreted this phrasing in a very local manner. For example, in Article 3 of its 1987 Constitution, the death penalty was abolished except for “heinous crimes.”⁴⁵³ Despite having ratified the ICCPR in 1986, the Philippines vacillated back and forth between partial and complete abolition of the death penalty. During the period 1987 and 1989, in fact, the Philippine legislation attempted to introduce numerous bills for the re-introduction of the death penalty.⁴⁵⁴

⁴⁵⁰ See: <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en>, accessed on July 24, 2018.

⁴⁵¹ Note: The Philippines signed the International Covenant on Civil and Political Rights (ICCPR) on 19 December 1966 and ratified the same on 23 October 1986. See: <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en>, accessed on July 24, 2018.

⁴⁵² Article 6 (par.2), part III of the International Covenant on Civil and Political Rights (ICCPR). See treaties.un.org.

⁴⁵³ The exact wording of the Article 3 Section 19 of the 1987 Constitution stated as follows “Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*”

⁴⁵⁴ Since mid-1987 to 1989, five bills were passed to the Congress with attempts to reintroduce the death penalty. The first bill was passed to reinstate the death penalty for fifteen “heinous crimes” including

Between 2000 and 2006, several important cases from the Philippines came before the Human Rights Committee (HRC) of the United Nations with respect to their use of the death penalty in court decisions that perhaps violated the intent of Article 6 of the ICCPR. In general, the majority opinions did not reverse or condemn the Philippines' use of the death penalty in these cases. However, there were sharp criticisms from the dissenting opinions of some members of the Higher Court. The aim of this section, therefore, is to discuss the historical background of this problem and to analyze these important cases and how they may have been in conflict with the international obligations that the Philippines agreed to in 1986. This section is relevant to the study because the problem of the reintroduction of the death penalty by a country was not clearly mentioned in the ICCPR, but Article 6 of the Covenant would come to be interpreted in such a way suggesting that member countries would be expected to move toward eventual abolition of such punishments.

Legal system in the Philippines

The Philippine legal system is a blend of civil law (Roman) and common law (Anglo-American).⁴⁵⁵ The Philippines is a democratic state with three great branches of government, namely: The President as its Chief Executive and Head of State; the Congress that is in charge of legislative power; and the Judiciary headed by the Supreme Court which is vested with judicial power.⁴⁵⁶

There are two primary sources of the law, in the Philippines: (1) The Statutes or Statutory Law, and (2) The Case Law.⁴⁵⁷

Statutes are defined as the written enactment of the will of the legislative branch of the government rendered authentic by certain prescribed forms or solemnities (more also known also as an enactment of Congress). Generally, these consist of two types, the

murder, rebellion and the importation or sale of prohibited drugs in 1987. The objectives of the Bill were an "effective deterrent against heinous crimes" and "as a matter of simple retributive Justice." One year later, in 1988, the House of Representatives voted for the restoration of capital punishment, followed three similar bills were put before the Senate in 1989. But there are all failed.

⁴⁵⁵ See: < <http://www.aseanlawassociation.org/legal-phil.html>. >, accessed August 30, 2018.

⁴⁵⁶ THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES at <<http://www.officialgazette.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xiii/>>., accessed August 30, 2018.

⁴⁵⁷Hector S. De Leon, 2011. Textbook on the Philippine Constitution, Manila, Philippines: Published & distributed by Rex Book Store, 2011.

Constitution and legislative enactments.⁴⁵⁸ In the Philippines, statutory law includes constitutions, treaties, statutes proper or legislative enactments, municipal charters, municipal legislation, court rules, administrative rules and orders, legislative rules, and presidential issuances.⁴⁵⁹

Jurisprudence or Case Law are cases decided or written opinions by courts and by persons performing judicial functions.⁴⁶⁰ Also included are all rulings in administrative and legislative tribunals, such as decisions made by the Presidential or Senate or House Electoral Tribunals.⁴⁶¹

Death penalty in the Philippines

It must be stated that the real problem began in 1993, when the Ramos administration listed 46 crimes as punishable by death under the Republic Act No. 7659. This law was amended further to include the death penalty for 52 offenses (30 of which were death-mandatory, and 22 death-eligible). This legislation appeared to broaden the interpretation of the term “heinous crimes”, but in fact was a full re-introduction of the death penalty, which probably violated the provision of Article 6(2) ICCPR, and was actually referred to as the “Death Penalty Law.”⁴⁶² As a signatory to the 1986 Covenant, the Philippines was supposed to send periodic reports on their progress in abolishing the death penalty. However, it failed to do so until 2003. As a result, the Human Rights Commission (HRC) which is a constitutional body, could not offer any criticisms until 2003 and after several cases had come to light. Before looking at this HRC summary report, several cases, however, should be discussed in the historical context because these highlight some emerging issues concerned with the fact that the Philippines was reintroducing the death penalty.

⁴⁵⁸*Ibid.*

⁴⁵⁹*Ibid.*

⁴⁶⁰*Ibid.*

⁴⁶¹*Ibid.*

⁴⁶²*The Republic Act to Restore the Death Penalty on Certain Heinous Crimes*. No. 7659, December 1993.

Interpretations of Article 6 regarding reintroduction of the death penalty

The first case that came before the HRC was *Piandiong et al v. the Philippines* (869/1999) in December 2000.⁴⁶³ The Philippine Supreme Court upheld the death penalty in this case based on a direct interpretation of RA 7659. In this case, Piandiong and two accomplices had been sentenced to death for the crime of homicide.⁴⁶⁴ On 7 November 1994, the Regional Trial Court at Caloocan city in the Philippines convicted Mr. Piandiong, Mr. Morallos, and Mr. Bulan of robbery and killing a policeman. They were sentenced to death because the court found that the killing of a policeman while committing another crime was a “serious crime.” Their attorney filed an appeal to the Supreme Court, but this was denied on 19 February 1997. Though the execution was set for 6 April 1999, the Office of the President granted a three months reprieve. During this period, the legal counsel for the defendants presented a “communication” to the HRC asking for a review of this case in order to possibly stay the execution on the grounds that the state violated articles 6 and 14 of the ICCPR.

Initially, the Philippine government argued that the defendants’ counsel could not submit the communication to the HRC after having applied for Presidential clemency. By the time, the HRC criticized this tactic, the execution of the three defendants took place on 8 July 1999. While the Committee recognized the counsel’s claim that there was a violation of Article 6(2), in this instance, the Committee was not in the position to address such issues.⁴⁶⁵ Basically, a majority of the Committee ruled in favor of the State with respect to articles 6 and 14

However, the Committee was concerned that the Philippines committed a grave breach of its obligations to the 1989 Optional Protocol by putting the defendant to death before a decision could be made on this matter.⁴⁶⁶ The HRC took a harsh view on this procedural matter but could find no clear substance to the claim that the Philippine legal

⁴⁶³ CCPR/C/70/D/869/1999, 20 December 2000

⁴⁶⁴ *Ibid*, at 1.2

⁴⁶⁵ *Ibid*, at 7.4

⁴⁶⁶ Art.1, Optional Protocol to the ICCPR: “A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.” The Philippines had accepted individual complaints procedures to the Optional Protocol on August 1989, See: < https://tbinternet.ohchr.org/_layouts/TreatyBody. >

system had violated the human rights of the three defendants. While there were several dissenting opinions, these views focused on issues regarding Article 14 and not Article 6(2). One of the dissenters, Mr. Martin Scheinin concurred that there were insufficient grounds to claim that the Philippines had violated the Article 6(2). Mr. Scheinin would become a leading dissenter in such future cases as discussed below.

In *Carpo v. the Philippines* (1077/2002), the legal counsel filed communication to the HRC claiming that the Philippines violated the human rights of Jaime Carpo, Oscar Ibao, Roche Ibao, and Warlito Ibao under article 6 (2) and 14 (5). On 22 January 1998, the Regional Court of Tayug, Pangasinan, convicted these men for “multiple murder with attempted murder.”⁴⁶⁷ According to the depositions, these men were accused of throwing a hand grenade into the Dulay family residence, which resulted in the death of three of the Dulay family members and the wounding of another. In August 1996, the lower court found them guilty and sentenced them to death, which was upheld by the Philippine Supreme Court in 2001.

The counsel for the defendants filed the communication to the HRC in May 2002 claiming that the rights of these men were violated under articles 6(2) and 14(5) of the Covenant. In turn, the HRC requested that the Philippines not to carry out the death sentence following rule 86.⁴⁶⁸ In this case, the legal counsel argued that the government should not be allowed to impose the death penalty following Article 6(2) because the State was essentially broadening the definition of what constituted “most serious crimes.” In addition, their complaint included the contention that their clients had not received a “real review in the Supreme Court,” which was a violation of Article 14(5) of the Covenant.⁴⁶⁹ Interestingly, the Philippines attempted to argue that the HRC should not be involved in questions of Constitutionality following the *Piandiong* case (1999).

Questions concerning constitutionality emerged because a majority of the justices of the Supreme Court (11 of the 15) agreed that the definition of “heinous crime” following the provisions of Republic Act No. 7659 and the use of Article 248 of the Revised Penal Code (1932) applied, with respect to the *Carpo* case. The HRC disagreed with the claim of the Philippines government. In 2003, as the HRC concluded that the

⁴⁶⁷ CCPR/C/77/D/1077/2002, 15 May 2003

⁴⁶⁸ CCPR/C/77/D/1077/2002, at Para. 1.2

⁴⁶⁹ CCPR/C/77/D/1077/2002, at Para. 3.2

Philippines violated Article 6 (1) of the Covenant which stated “[E]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁴⁷⁰ In short, the HRC maintained the view that the Philippines had been arbitrary in trying to expand the definition of what was considered a most serious crime. The Committee felt no need to address the counsel’s claims concerning Article 6 (2) and Article 14 (5). In her dissenting opinion, Ms. Ruth Wedgwood contended that the HRC erred because of some inconsistencies in interpretation of what constituted a most serious crime, and she felt that the Committee had misinterpreted Filipino law.⁴⁷¹ However, as will be shown in the *Judge v. Canada* case (2003), the HRC was beginning to see the Covenant as a “living instrument” that should be applied “in the light a present-day condition.”⁴⁷²

While not involving the Philippines, the 2003 case of *Judge v. Canada* (829/1998) was relevant because the Human Right Commission invoked the full extent of Article 6 in an extradition case to protect the human right of an individual. On 15 April 1987, the defendant Mr. Roger Judge (a citizen of the US) was convicted of first-degree murder and sentenced to death by a court in Pennsylvania. Prior to execution Mr. Judge escaped and fled to Canada. On 13 July 1988, Mr. Judge was convicted of two robbery cases that he committed in Vancouver, Canada. Though he appealed the conviction in 1991, the court dismissed this claim. Following its dismissal, Mr. Judge announced his intention to claim refugee status because the Canadian government ordered case deportation. In 1994, he withdrew his refugee status and the deportation order became effective. In 1997, Mr. Judge wrote a letter to the Minister of Citizenship and Immigration asking that the deportation order be stopped until the US requested extradition. If the US had asked for extradition, then Canada could have requested assurances that Mr. Judge would not be subject to the death penalty.

In 1998, the representative for Mr. Judge filed a petition to the HRC claiming that Canada had violated the right of Mr. Judge following Article 2(3) and Articles 6, 1, 7, 10 and 14 of the Covenant. The basic argument was that Canada had detained Mr. Judge for 10 years knowing that he may face deportation to the US and possible execution. As

⁴⁷⁰ Art 6.1 ICCPR

⁴⁷¹ CCPR/C/77/D/1077/2002, Individual opinion by Ms. Ruth Wedgwood, (p.13)

⁴⁷² *Roger Judge v. Canada* (829/1998). At Para 10.3

such, counsel argued that Mr. Judge suffered from “death row phenomenon,” was not treated with humanity and respect, and that Canada sought to prolong the agony and condition knowing that he would be deported and possibly executed in the United States. The Canadian government, on the other hand, insisted that it had full right to apply justice in this case because Mr. Judge had committed a crime in Canada. In addition, the Canadian side claimed that the defendant still had his rights to appeal his convictions and sentence in Pennsylvania.

In this case, the HRC had to consider two main questions that centered on Articles 6 and 7 of the Covenant. The first question concerned whether Canada (a country that had abolished the death penalty) had violated Mr. Judge’s rights by trying to deport him to a country where the death penalty maybe carried out. The second question focused on whether the actual deportation would have deprived Mr. Judge of his full rights. While these articles do not refer to the situation involving the possible extradition of the person to a country that imposes the death penalty, the Committee had stated in *Kindler v. Canada* (1991) that if one country decides to deport a person, whereby that individuals’ rights under the Covenant could be in danger in another country, then the first country may be in violation of the Covenant.

In sum, the HRC found that for countries that have presently abolished the death penalty, it is a duty not to put individuals at risk in another country where they could be subject to execution; as such Canada had an obligation not to deport or extradite Mr. Judge without making sure that the death sentence would not be carried out in the United States. In reviewing the application of Article 6, the Committee noted that the complete article applied in this context from paragraph 1 (“Every human being has the right to life...”) to paragraph 6 (“Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant”).⁴⁷³

From the three above cases, the communication from the HRC may appear convoluted or even contradictory. In none of these cases did the HRC explicitly address the question concerning a country’s reintroduction of the death penalty. In the *Piandiong* case (2000), the HRC may have appeared reluctant to criticize the

⁴⁷³*Ibid.* at Para. 4.1

Philippines for its reintroduction of the death penalty. In the Carpo case (2003), the HRC did criticize the Philippines for widening the scope and definition of its use of the term “heinous crimes” in order to expand the application of the death penalty in its jurisdiction. However, as stated in *Judge v. Canada*, the intent of Article 6 was to balance between the reality that were some countries that retained the death penalty, while many countries were abolishing or had abolished this form of punishment. As such, Article 6(1) required member states to take a broad interpretation with respect to the “inherent right to life,” while Article 6(2) which restricted execution for the “most serious crimes,” should be interpreted narrowly.⁴⁷⁴ However, later, some Committee members would interpret *Judge v. Canada* case as being relevant to the “indirect” reintroduction of the death penalty.⁴⁷⁵

The Human Rights Committee’s concerns

As of 2003, the Philippines had not submitted an obligatory Periodic Report that each member state must send to the HRC under Article 40 of the Covenant detailing a country’s condition or stance with respect to the death penalty. In the report entitled the *International Covenant on Civil and Political Rights*, the HRC raised several questions concerning issues related to possible violations of Article 6. The first question asked the Philippines directly how they justified the reintroduction of the death penalty under RA 7659.⁴⁷⁶ The second question required the Philippines to provide detailed information as to which crimes carried the death penalty and which were mandatory.⁴⁷⁷ Finally, the HRC wanted to know the statistics for the numbers of death sentences carried out, persons on death row, and the total number of executions.⁴⁷⁸

In response to the HRC’s first question, the Philippine delegation argued that the reintroduction of the death penalty under RA No. 7659 was not contradictory to Article 3 of the 1987 Constitution because such punishments were justified by the recurrence of rampant criminality, and served as a powerful deterrent.⁴⁷⁹ Mr. Scheinin and other committee members were also concerned and critical that a number of Filipinos were

⁴⁷⁴*Ibid* at Para.10.5

⁴⁷⁵ Rolando v. Philippines, CCPR/82/D/1110/2002, P.10

⁴⁷⁶ List of Issues. 9, CCPR/C/79/L/PHL.

⁴⁷⁷*Ibid.* at Para. 10

⁴⁷⁸*Ibid.* at Para. 11

⁴⁷⁹ Summary Record of the 2138th Meeting. 12, CCPR/SR 2138

slated for execution and that the Philippines had actually increased the list of crimes (46) that warranted the death penalty. On this question, the Committee found that the increase in “mandatory” capital punishment for these crimes was an “arbitrary deprivation of life” under Article 6 (1).⁴⁸⁰ The HRC held that the correct interpretation of the Article 6 of the Covenant was that action to abolish the death penalty could not be reversed. Thus, capital punishment was reserved for states parties that had not abolished it completely.⁴⁸¹

The Philippines responded to the second question, explaining that those crimes were categorized as “heinous crimes” in which the sentence of death could be carried out in accordance with RA 7659, but the report was unclear on what constituted the mandatory use of the death penalty.⁴⁸² The actual list of crimes classified as heinous were as follows: treason; rape; kidnapping; serious illegal detention; robbery with violence; intimidation; destructive arson; plunder; the importation; delivery sale; possession or use of prohibited drugs; murder; piracy; mutiny on high seas or in Philippines waters; qualified bribery; parricide; and infanticide.⁴⁸³

The HRC independently found that 25 out of 46 of these crimes carried the mandatory sentence of the death penalty.⁴⁸⁴ As such, the Committee said that the Philippine courts were left with few options in sentencing and as a result the Philippines was engaging in arbitrary deprivation of life violative of Article 6(1) of the ICCPR. The HRC criticized that the Philippine interpretation of the term “most serious crimes” in Article 6(2) was far too broad and should have been seen as narrow.⁴⁸⁵ The HRC had originally asked the Philippines to identify the difference between their term “heinous crimes” under their domestic law, and the “most serious crimes” under the Covenant. However, the Committee was satisfied with their response and noted that use of mandatory death penalty for a number of crimes was excessive and beyond the scope of the definition of the “most serious crimes” within the meaning of Article 6(2) of the Covenant.⁴⁸⁶

⁴⁸⁰ Article 6(1), ICCPR

⁴⁸¹ *Ibid.* at Para. 38

⁴⁸² *Ibid.* at Para. 12

⁴⁸³ *Ibid.*

⁴⁸⁴ *Ibid.* at para.39

⁴⁸⁵ *Ibid.*

⁴⁸⁶ Concluding Observations. 10, CCPR/CO/79/PHL

Concerning the statistics for the numbers of death sentences carried out, for persons on death row, and the total number of executions in the Philippines, the delegation reported that as of 1 October 2003, a total of 979 death sentences had been handed down, of which 145 had been upheld by the Supreme Court, and 834 were still under review. In addition, there had been seven executions, and 145 prisoners were awaiting full sentencing of death.⁴⁸⁷ Furthermore, The Committee noted serious concern over the fact that a number of the accused that been sentenced to death were minors, and reminded the delegation that under the Covenant, the death penalty was prohibited for those under 18 years of age.⁴⁸⁸ In sum, the HRC urged the Philippines to repeal all laws regarding the imposition of the death penalty and advised that they accede to the Second Optional Protocol.⁴⁸⁹

As the HRC was dealing with the Summary Report, the case of *Rolando v. Philippines* (1110/2002) came to their attention. In this case Mr. Pagdayawon Rolando, an ex-policeman, had been sentenced to death by the Regional Trial Court of Davao City in May 1997. The court had ruled that the death penalty was mandatory for the crime of rape under RA No. 8353. In 2001, the Supreme Court affirmed the death sentence, as well as increased the civil liability awards from 50.000 to 75.000 Pesos. The legal counsel for the defendant filed a petition to the HRC in August 2002 claiming that his client was the victim of state violation of Article 5(2); Article 6(1) and (2); Article 7; Article 9(1), (2), (3), and (4); Article 10(1); Article 14(1), (2), and (5); of the Covenant. More importantly, counsel for the defendant argued that the death sentence for a crime of rape violated the state's obligation to limit such punishment to "most serious crimes" as mandated in Article 6. Furthermore, counsel added that reintroducing the death penalty for such a crime violated the spirit of Article 6, implying that once a state abolishes the death penalty, it should not reintroduce such form of punishment.

The Philippines government failed to adequately respond to this communication and the HRC was compelled to respond to the petition following Article 4(2) of the Optional Protocol. In short, the Committee found that the Philippines had violated Rolando's rights under Article 6(1), (2) and (6); Art.9 1, (2), and (3); and Art 14 (3)d; of

⁴⁸⁷ Summary Record of the 2138th Meeting. 12, CCPR/SR 2138

⁴⁸⁸ Concluding Observations. 10, CCPR/CO/79/PHL

⁴⁸⁹ *Ibid*

the Covenant. The Committee concluded that Mr. Rolando's sentence should be commuted, and he should receive appropriate remedies. Furthermore, the Committee stated that the Philippines was "under an obligation to avoid similar violations in the future."⁴⁹⁰

In their dissenting opinion, Mr. Scheinin, Ms.Chanet and Mr. Lallah agreed with most of the Committee's findings of violation under Article 6, but they felt the time had come to address the question concerning those countries that were reintroducing capital punishment. The dissenters argued that the topic of reintroduction of capital punishment had been breached in the case of *Judge v. Canada*. The Committee decision in the Judge case had affirmed that exposing the person to the risk of a death penalty in another country was a violation of Article 6 when done by an abolitionist country.⁴⁹¹ The dissenters argued "... to any reader familiar with the issue of capital punishment, it is clear that the Committee in the quoted paragraph decided, not only its position in respect of "indirect" reintroduction of the capital punishment, where an abolitionist country sends someone to face the death penalty in another country, but also what comes to direct reintroduction by allowing in its own law for the death penalty after first abolishing it."⁴⁹²

The dissenting opinion further detailed to explain the history of the Philippines government reintroducing the death penalty from 1987 to 1993, and many of the legal issues related to this problem. According to these three, the fact that the Philippines Constitution had a "domestic reservation" with respect to such punishment, was actually irrelevant to Article 6 of the Covenant.⁴⁹³ In actuality, the Philippines had abolished the death penalty in 1987 and reintroduced it in 1993. From their point of view the legal issue concerning the reintroduction was addressed in *Judge v. Canada*, but the Committee had failed to deal with the factual issue as to whether the changed made in the law in the Philippines actually amounted to the abolition of the capital punishment in that country.

⁴⁹⁰ Concluding Observations, para.5.5

⁴⁹¹ Rolando v. Philippines, CCPR/82/D/1110/2002, P.10

⁴⁹² *Ibid.* at page .11

⁴⁹³ CCPR/C/82/D/1110/2002, P.13

The Philippines re-abolishes the death penalty

On 24 June 2006, the Philippine Congress enacted Republic Act No. 9346, an act prohibiting the imposition of the death penalty. This new law repealed RA 7659, known as the “Death Penalty Law” and all other laws, executive orders, and decrees concerning the death penalty.”⁴⁹⁴ Republic Act No. 9346 clearly stipulated that:

In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.⁴⁹⁵

Essentially, RA 9346 replaced the death penalty with the concept of *reclusion perpetua*, which means life imprisonment. According to this act, persons sentenced to life imprisonment might be eligible for parole under Act No. 4103, known as the Indeterminate Sentence Law.⁴⁹⁶ In addition, at least one a week during a month, the information of consideration of the Board of Pardons and Parole on the matter of *reclusion perpetua* or life imprisonment should be issued by public dissemination. This act also permitted the President to grant executive clemency under Article VII, Section 19 of the Constitution of the Philippines.⁴⁹⁷

In the interim, the HRC needed to address the *Larranaga v. Philippines* case (1421/2005), which involved several substantial issues including questions related to the mandatory imposition of the death penalty and the reintroduction of such punishment by the Philippines. The facts related to the Larranaga case go back to 5 May 1999, when the Special Heinous Crime Court in Cebu City found Mr. Larranaga guilty of kidnapping, rape, and homicide. On 3 February 2004, the Supreme Court found the defendant guilty and sentenced him to death for one of the victims, and to life imprisonment for the kidnapping of another victim.

While the defendant’s representatives made many claims to the HRC on substitute issues, the central complaint alleged that the Philippines had violated Article 6 of the

⁴⁹⁴ Republic Act No. 9346, 24 June 2006, Section 1

⁴⁹⁵ Republic Act No. 9346, 24 June 2006, section 2

⁴⁹⁶ *Ibid*, Section 3

⁴⁹⁷ *Ibid*, Section 4

Covenant by reintroducing the death penalty. The government of the Philippines, in turn, asserted that the state had never abolished the death penalty since the ratification of the 1987 Constitution. That the said Constitution allowed the death penalty to be imposed for compelling reasons involving “heinous crimes.” The Philippines referred to the decision by the Supreme Court in *People of the Philippines v. Echegaray* (1997) with emphasized that the “imposition of the death penalty for a certain crime is purely a matter for domestic discretion,” though it was limited to “most serious crimes.”⁴⁹⁸ Thus, the Philippines maintained that Article 6 should be understood to mean that only countries which had completely abolished the death penalty could not reintroduce such a punishment and was not meant for countries that had not eliminated it.

Because the Philippines had repealed the death penalty in June 2006, the Committee felt no need to consider the counsel’s claims regarding violations of Article 6. Basically, the Committee considered the question regarding the reintroduction of the death penalty as “no longer a live issue.”⁴⁹⁹ Unfortunately, the HRC was reluctant to address the question of what to do with the countries that were attempting to reintroduce the death penalty after having partially or completely abolished such a penalty. While the counsel of the defendant had pointed to the dissenting opinion in *Rolando v. the Philippines* (2002), the Committee seemed to again avoid this important question concerning the reintroduction of the death penalty.

The Second Optional Protocol

Between 2006 and 2016, the Philippine legal system appeared to be adjusting to the idea of not using the death penalty. In 2007, the Philippines acceded to the Second Optional Protocol, further committing the nation and the legal system to the idea that the death penalty was a violation of human rights. This protocol was important because two of its articles expressly state that a signatory state could not execute people within its jurisdiction. Article 1 states that no person could be executed in a country which had signed the protocol. Article 2 requires all states that had signed the protocol to take full measures to abolish the death penalty.⁵⁰⁰

⁴⁹⁸*Larranaga v. Philippines* (1421/2005), Para. 3.1

⁴⁹⁹*Ibid.* Para. 7.3

⁵⁰⁰ Article 1, 2nd Optional Protocol to the ICCPR

In 2012, the HRC released the Concluding Observation with respect to the most recent advances made by the Philippines regarding this issue. The HRC positively commented on the fact that the Philippines had enacted the RA 9346 completely abolishing the death penalty, as well as its accession to the Second Protocol. However, the Committee remain concerned about the lack of priority with respect to the 1987 Constitution, stating that: 1“*The State party should take all necessary measures to ensure legal clarity on the status of the Covenant in domestic law. The State party should also continue to take appropriate measures to raise awareness of the Covenant among judges, lawyers, and prosecutors to ensure that its provisions are considered by national courts.*”⁵⁰¹

The Committee referred to paragraph 6 of the 2003 Concluding Observation,⁵⁰² which concerned the Views of the Committee that should be respected and implemented. Again, the Committee reiterated that: “*The State party should take concrete steps to implement the Views of the Committee which finds a violation of the Covenant. It should also establish, with the aim of implementing the Views of the Committee, a mechanism with a mandate to (a) study the Committee’s findings in its Views; (b) propose measures to be taken by the State party to give effect to the Views; and (c) provide victims with an effective remedy for any violation of their rights.*”⁵⁰³

The 2012 Concluding Observation, however, did not mention the issue of the reintroduction of the death penalty in the Philippines. Still, the Committee confirmed that the State party, should widely disseminate the Covenant, the two Optional Protocols to the Covenant, and other documents concerned. Hence, the Concluding Observations asked the Philippine government to increase awareness among the judicial, legislative, and administrative authorities, civil society, and non-government organizations operating in the country, as well as the general public about the abolition of the death penalty.⁵⁰⁴

⁵⁰¹*Human Rights Committee, Concluding Observation Philippines, CCPR/C/PHL/CO/4* (13 November 2012). at Para. 5

⁵⁰²*Human Rights Committee, Concluding Observation Philippines, CCPR/CO/79/PH* (1 December 2003). at Para. 6

⁵⁰³ *Human Rights Committee, Concluding Observation Philippines, CCPR/C/PHL/CO/4* (13nd November 2012). at para.6

⁵⁰⁴ *Ibid*, at para.24

In 2016, however, the political mood began to change as the Philippine society became concerned with the rising drug crime rate. As a result, a bill was introduced in the House of Representatives demanding the reintroduction of the death penalty for drug-related offenses. The House passed bill 4727 proposing a new death penalty law. At present, the Senate is still considering passing this law which defines a drug offense as a “heinous crime.” These recent events, highlight the deep concerns that the HRC commented on in their Concluding Observations in 2012.

In March 2017, the HRC wrote an open letter criticizing the Philippine government for attempting to reintroduce the death penalty. The Committee regretted the recent developments with respect to this issue and pointed to the fact that the government had abolished the death penalty with RA 9346. This letter also noted to the fact that Article 6(2) allowed member states that had not abolished the death penalty, to impose it only for the “most serious crimes.” More importantly, the letter clearly indicated for the first time that the same article suggested that once the death penalty was abolished “through amending domestic law or acceding to the Second Optional Protocol, States are barred from reintroducing it.”

Some Thoughts

While the present Duterte⁵⁰⁵ administration used extrajudicial methods to eliminate drug crimes, the Senate has been unable to consider House Bill 4727, the proposed law attempting to reintroduce the death penalty. If this bill becomes a law, the Philippines will have reintroduced the death penalty for the second time, since the last one was launched in 1993 under RA 7659. Nevertheless, the case of the Philippines, as a State party of ICCPR and its two Optional Protocols is a challenge for the Human Rights Committee, with respect to the interpretation of the provision of the Covenant which should be clear and no option for a different meaning. Thus, the State party should respect the Rules and obligations of the Covenant, in particular, the Article 6 of the ICCPR would no conflict between the State parties and the Human Rights Committee as reflected in the cases and the reactions of HRC provided in this section.

⁵⁰⁵The Presidency of Rodrigo Roa Duterte, also known as the Duterte Administration, following his inauguration as the 16th President of the Philippines, began on June 30, 2016 at present

Appendix III

Prime Minister's Order No 53/PM Order on Arresting, Investigation and Offender's Judgment

I. Previous situation

After the people's revolution and seize the power in nationwide based on third resolution of the central party, cancellation of monarchy, colonialism and establishment the republic democracy and people's regime, party and authority in each level had work hard for anti-revolution and person who has serious crime to benefit of people, worker and ethnic groups.

Together with bring the leaders and soldier, leaders and police, employees of Vientiane side and collection of social disorder groups to train-chastise at the training center and detentions places, party and authority in each level also advice on democracy to be wider in order to improve the knowledge on political of people namely in the new liberate zones to love the nation, ethnic groups, working and new regime in improving level, from these works, we can protect the republic democracy people's regime which is young and social order in the good situation such as:

1). Many local authorities paid attention to inspect, find, found the anti-new regime persons, spies, and illegal activists who tries to destroy our new regime and can arrest some of them, arresting of these group are correctly and support to the policy of central party and State.

2). Some local authorities, mainly in Vientiane province opens their court to judge these group openly by participation of people in large number, people can understand clearly to the policy of party and State, and absolutely of the new regime authorities against anti-new regime person, then people will cooperate and belief in revolution power that is good point and our achievement in the previous time which is the first victory of the party and government against enemy, who tries to eliminate our new regime which is new born and young.

Together with the good points and achievements, we still have some weak points and defectively which should improve on time in order to avoid damages, destroy to

policy, new regime and to avoid that enemy side will distort to new regime, then make people unbelievable and afraid as below:

1. Arresting of accused person is not conform with the principles, any section can arrest, such as village security guards, police, local authority, people or soldier, arresting without document, without order of court, without witness or evidence to prove offender, sometime police or soldier arrest accused person without inform to local authority for cooperation or arresting without inform to local authority and family of arrested person. Therefore, people are concerned, many arresting cases because of inciting, some accused persons were arrested which has little accusation or light offending then making detention place or prison are full, and wasting the State's budget and reducing production labors, some arresting have no offending, or based on reporting of enemy's spies who still live or working in many state's organizations, which also means that arresting can called one way direction.

2. Open the court to decide still delay and face with obstacles because of no investigate to collect comprehensive evidences, still base on report of police, when the accused person reject the accuse items, then the prosecutor cannot going on because lack of investigation notes, some local authorities arrest accused person but do not open the court to decide, then making accused person and his/her cousin not satisfy, some local focuses on killing without sending to court of upper organization.

All of above mentioned harmful to liberty of people and thinking of people, reflecting to a good policy of united, enemy uses these gaps for division and distorting to our new regime.

Causes of weak points and defections:

a). Outside causes:

1. Our party just seize the power to people's hand, still lack of administrative lessons.

2. Enemy uses all tricks, ruthless in order to disturb, divide the domestic solidarity in order to make people turn to anti our new authorities.

3. We do not have clearly laws, regulations on arresting and suppressing of anti-revolution.

4. We still do not train the legal consciousness to State's officer, soldier, police. Therefore, many cases are not conforming to the laws.

b). inside and main causes:

1. All level of party do not understand policy, labor absolutely regime then they do not attention to advice, support authorities and relevance organization using absolute power to enemy and people's republic as correctly or suitable, but do not allow enemy escape.

2. Employer, member of party, soldier-police, civil servant do not know that after establish of new regime, the class contesting is still continue to be more serious, obstacles, confusing, and long-term, then cannot use of policy such as united policy, ethnic group policy and so on, together with suppressing.

3. Consciousness to the organization is not high, in chare person did not pay attention to investigation in order to collect evidence by clearly note and compile as file of a case to submit to the court as comprehensively, arresting and deciding the case based on emotion without response to the central party, government and people.

In order to promote the strengthen points and improve the weak points and defection points as already mentioned. The government allow to use the following principles as temporary in the time of waiting for promulgation on regulation of justice activities.

II. Temporary principles on arresting, investigation and defender's decision

Objective: betraying person and offender arresting who conduct a serious crime is preventing their moving and this is the important methods for suppressing of betraying in order to reduce enemy and moving to eliminate anti-revolution, suppress to right person, no one way direction, understand well on policy "suppress plus forgiveness, punishment plus training, training plus basic labor movement" but do not allow enemy escape from the punishment.

Goals: making people's more and more support the legitimacy party's policy and state, to love the nation, love the working, love new regime, love socialism, identify friend and enemy, happiness and distribute their physical power, material and mind to the security protection mission, protection the nation, to be the labor force for

production, self-resilience, to be the owner of the nation and social, those goals to ensuring of improving of laborer dictatorship.

Contents of principles

1). Arresting of offender: arresting of accused person who had committed a crime which has full evidence-witness and must focus on a group that crime on political movement to damage revolutionary authorities and serious committed crimes to state and people's property such as robbery, murder and so on...which leads to social security, for those whose committed light crimes such as stolen which is not severe impact to social security, they should be detente for re-education or advice and compensate for the lose property, then send them to mass organization for re-educate, those must be under the principles of party policy and state and justice for arresting. This is absolutely prohibited to use self-emotion for revenging or love or hate of person.

In the case of witness of a crime or has the victims, witness who see the crime or identify an offender directly, or whenever found the evidence of crime in the body, cloth or house of that person, or in the case of accused person tries to escape or temporary live or moving or have no name, officers in all levels, all group of soldier, police, civil servant and people can arrest and checking without arresting order or examine order, but should send the accused person together with evidences to nearly authorities suddenly by take note of as formally but do not allow to arrest as unreasonable.

Together with above cases, arresting, temporary releasing or permanence releasing, checking must have written order which includes:

- At the central level is the prosecutor department of the ministry of justice issuing an order after agreement between ministry of interior and ministry of justice.
- At the province or municipality is the prosecutor at the justice division of province or municipality after approved by the standing committee of the provincial or municipality authorities.

Concerning to arresting of accused person in any cases, arresting officer should coordinate with the local authorities or relevance organizations, in the case of officer or civil servant were arrested outside of the office, arresting officer should report to their organization within 24 hours: if the accused person is monk, arresting officer should

inform to Buddhist temple's abbot for leaving the Buddhist monkhood before arresting, if the accused person disguised monk, novice or officer can leave the Buddhist monkhood then arrest him to criminal procedure, but should inform to the local monk's committee.

In the village, sub-district or checking point level which receipt an offender, those organization should draft note letter and sending accused person together with note letter to the district level within 24 hours, after the district receipted and would like to investigate again to compile the case, district can detent 3 days, then must be submitted the case to provincial or municipality as soon as possible. After receiving the file of case and offender, provincial or municipality can study, consider for temporary detention or temporary releasing based on circumstances of offender, term of temporary detention for investigation start from the date of case receiving until 3 months, then must submit the case to the court, exception for the complicated case, and can extension more 3 months but must not over 1 year, such extension must approve by provincial prosecutor and provincial committee authorities.

House's examination in all cases must conduct in front of local authorities or representative of relevance organization, house owner, property owner or property-care-person (if any), nearby house person who has 18 years of age at lease 2 persons to be witness, checking of woman accused person must conduct by women who has 18 years of age as assistance to the all-men officer, such conducting must do in the suitable place.

After finish house examination, report must be written as formally format before sign by the owner of house or property or property-guards in front of officer, for the exhibit property should be listed by put detail of seize, quantity and quality before sending to the court, if someone damages to or replace, he must compensate and will be disciplined or punished.

House's examination can conduct from 6 am to 7 pm or in all places, exception for emergency and necessary cases which can conduct in the nighttime, in the case of abbot, church examination must be cooperated from the monk.

2). Organization activities and right, duties of court

- In the sub-district level not allow to establish court, however, the security committee responses for the justice activities, whenever conflict are available within the

people, committee should cooperate with mass organization in local authorities for mediation as much as possible.

- In the district level, there is justice section which has a head and one assistance, when the court will be opened, the leader of district committee proposes to provincial level or appointment the head of justice section to be chair and 2 people's judge⁵⁰⁶ as committee, while the assistance is the court clerk. While the prosecutor who proposes accusation will be a representative from the district police office. District court has the right to decide the lightly cases which cannot re-educate and have the term of prison from 1 days to 3 months. If the case of decision to the offender more than 3 days, it should allow appeal to the provincial court within 15 days, and it should send offender along with file of case to provincial court suddenly because it is not allow to have prison in the district, it is allow to have temporary detention place which cannot keep offender more than 3 days.

- In the provincial or municipality: which has provincial justice division that have a head, a deputy head, committee or people's judge 3 persons, court clerk 2 persons. Provincial or municipality decides a case in 2 levels:

- First instance: which deputy head of justice division is the chair and 2 people's judges are the committee and 1 court clerk and appointment by ministry of justice based on the proposal of the provincial committee authority. While a prosecutor who proposes accusation will be selected from the provincial or municipality police office. This court has the right to decide as the first instance and can appeal to provincial or municipality for all cases of political and criminal offenses which has presentment term less than 10 years after approved by the committee of the provincial or municipality authorities.

- Appeal instance. While the head of justice division is the chair, 2 standing judges⁵⁰⁷ and 2 people's judges. While the prosecutor is the head of the provincial police office. Ministry of justice appoints the court based on proposal of the provincial or municipality authority committee. This court can decide:

1. appeal instance and cassation for all cases which district court decide as first instance which appeal by client or prosecutor.

⁵⁰⁶ People's judge is the judge selection from the representative of the people's council member.

⁵⁰⁷ Standing judge or permanence judge is the person who work permanence in the court.

2. First instance and appeal instance for appeal to the central court (ministry of justice) which defines 15 days for all cases which decides for more than 10 years of imprisonment term to the death penalty. However, approval from the council of ministries must be done before deciding the death penalty. For the important political case, people's court can be opened without appeal, but for the death penalty must be approved by the same level as already mentioned. While the court must be added people's judge to be 4 persons.

People's judge of any court is selected by the people's council of the same level, selected person is the member of the people's council, member of associations in the same level, officers who is ethnic group including male and female. Selection people's judge must have 4 or more for change before case decision and to ensure that the case will be decided on time and full member which means that each level should 8 persons. People's judge has the authority to participate all case decision whenever necessary by court and have equal power to vote as the same as standing judge.

3. Investigation and decision

- Concerning on political case, investigation is the right of the police, each investigation should draft the summary report, investigation should conduct by 1 police while one police should take note, after finish of investigation, such summary must be read to accused person before signature together with the signature of investigator office and taking note person. whenever, file of case was compiled the case must be submit to the court.

- for the general criminal offenses, after the police officer conduct the primary investigation, such as should hand over to prosecutor or standing judge for detail investigation before submitting to the court in order to reduce the work of police and resolve the case on time.

When receiving the case, the court must be based on the directions-policies for decide:

1. must be based on current offense, but it must find the previous crimes, then it finds the real mind of wrongdoer in order to calculation of damage from his action and how people reaction to his/her action before punishment based on circumstances of offenses to ensure that punishment conform with an offense.

2. decide the capital punishment to the gang leader of anti-new regime who hates the revolution, who planned to collapse revolutionary authorities, mainly those who already committed serious crime to people, those who cannot adjust their mind and to be hated by the people.

3. severe punishment to those who movement to anti-revolution and making serious effect to the nation and people, but those persons acknowledge their action.

4. light punishment to those who are forced to act, by lying and do not really to act or to be hired by enemy but there are sorry for their past action and would like to adapt to new regime.

Court's decision must disclose in front of people, capital punishment for offender who already decided by the case should disclose as well. This is absolutely to kill without sending to case for consideration.

Finally, the government proposes to provincial or municipality authorities gathering all representatives of local authorities and representative of mass organization in each level, open platform to learn this order for deeper understanding, and collect all goods and weak points in the previous time, turn this order to be the power of each authority and each mass organization in order to effective enforcement.

When implementation of this order found any result, facing with barrier or misunderstanding, it should report to the government for revising.

Dated 15 October 1976

Acting Prime Minister of the Government
of Lao People's Democratic Republic
Deputy Prime Minister
(Sign and Signature)

Nouhak Phoumsavanh