



## The abolition of the death penalty: A case study of appropriate offenses

Wipaporn Natigirachord

Program in Criminology, Justice Administration and Society, Faculty of Social Science and Humanities, Mahidol University, Phutthamonthon, Nakhonpathom 73170, Thailand

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### Abstract

This research aims to study the nature of an offense appropriate for the death penalty and the types of offense resulting in the death penalty in Thailand in order to use such as a guideline for cancellation of the death penalty for some offenses that are not appropriate or consistent with the philosophy and objectives of the death penalty. This qualitative research collected information from relevant documents and researches to analyze the data. An in-depth interview with 15 people who play a vital role in the policy making process in the cancellation or amendment of the death penalty in Thailand was conducted. The study found that the crimes that should be abolished are offenses against liberty, offenses against property, offenses relating to public danger, offenses relating to drugs, sexual offenses, offenses relating to weapons, malfeasance in office and terrorism.

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### Introduction

Thailand has imposed the death penalty for many types of crimes, such as murder, rape and drug offenses for many years because of the belief about deterring and preventing these types of crimes. Thailand has as many as 103 punishable offenses with the death penalty as the most serious punishment based on 5 laws which are (1) Criminal Code, (2) Military Penal Code, (3) Firearms, Ammunition, Explosives, Fireworks and Imitation of Firearms Act B.E.2490, (4) Narcotics Act B.E.2522, and (5) the Prevention and Suppression of Prostitution Act, B.E.2539. However, some offenses such as offenses related to weapons, drugs and malfeasance are not considered as the most serious of crimes; thus, committing these crimes does not lead to the death penalty.

The government should carefully analyze the death penalty abolition as doing so depends on several factors such as the population and social elements. As many believe that abolishing the death penalty would lead to an increase in the

number of crimes and affect the safety of the people, it is vital for the government to have a discussion with different sectors in society (United Nations, 2014). Although Thailand is one of the members of the International Covenant on Civil and Political Rights, which requires Thailand to amend the constitution on the death penalty, Thailand faces serious problems as the number of serious crimes in the country are increasing. Thus, it is the sole responsibility of the government to stop or deter serious crime. In addition, Thailand has to deal with many serious problems related to moral, ethical, social and financial crimes, the efficiency of the justice system and conflict about the concept of cancellation of capital punishment. Inevitably, it shows that Thailand is not ready to be a country without a death penalty. In addition, the International Human Rights Commission has analyzed this issue and stated that the members who are yet to cancel the death penalty are not required to do so immediately, only to limit it to the party (The University of Minnesota, 1984).

Although, the death penalty is still enforced for some types of crimes, there are still processes or steps which would help prevent or limit the use of the death penalty in accordance with human rights, for example, not enforcing the death penalty on children, abstaining from using the death sentence on pregnant women before giving birth, suspension of the

death penalty on insane offenders, and also the petition of forgiveness after the judgments. Therefore, Thailand should not immediately cancel the death penalty. The proper method in abolishing the death penalty should be carried out under the same format as other countries that have prohibited its use. If Thailand does cancel the death penalty, it should be done in 3 steps. The first step is to cancel the death penalty for some inappropriate offenses in order to limit the scope of enforcement of the death penalty and to reduce resistance to the death penalty. Secondly, a period should be announced of the suspension of the use of the death penalty in prisoners on death row by inspecting the result of what would happen from the suspension from time to time each year in the degree of crime, the number of crimes, and the feeling of security of people. Finally, changing the maximum penalty from death to life imprisonment because life imprisonment is the penalty that permanently removes the defendant from society, as well as the death penalty (Sutherland & Cressey, 1978).

For these reasons, the researcher considers that the approach to reconsider reducing the scope of application of the death penalty should be studied by categorizing criminal offenses with the death penalty as serious crime and most serious crime and enforce the death penalty for the most serious crimes instead while using other suitable penalties for other types of crime to allow the court to judge the offenders based on the type of crimes. The result of this study will not only enhance the quality of Thai criminal justice process but also allow Thai law to be parallel with international human rights on the death penalty. Moreover, the results may clarify doubts of the international community as to why the death penalty still exists in the country. Thailand must be ready in aspects such as the attitude adjustment of society towards the death penalty, the preparation of precise laws and judicial administration, effectively developing the correctional system in the development of prisons to gain the highest security to support the number of prisoners imprisoned for life, that will increase due to the abolition of the death penalty, and create confidence in people so that they can live safely and would be protected from crime until Thailand is really ready for solving such. When every area is free of conflict, the cancellation of the death penalty could be done by launching a campaign to suspend the death penalty that leads to the cancellation of capital punishment, which would reduce conflicts in the society and make the cancellation of the death penalty in Thailand effective (National Human Right Commission of Thailand, 2014). In the future, if the death penalty is cancelled, it would benefit the development of the process of judgments and could protect the rights of the people and the offenders, allowing Thailand to follow the human rights standards and respect the pride of humans, which is appropriate action toward the offender on the same level as other countries which have abolished the death penalty.

## Literature Review

The death penalty is a form of punishment and it is a government-sanctioned practice whereby a person is put to death by the state. It is the maximum punishment imposed on those who commit an unlawful act and is commonly used for

offenses related to life, treason, war crimes, crimes against humanity, genocide (Kronenwetter, 2001). The death penalty in former times and up until now is used on offenders for 3 major purposes in order to execute retribution and revenge on offenders, to deter those who are expected to commit a crime from doing such, and to remove those who commit most serious crimes from society absolutely and permanently (Bedau & Cassell, 2005). However, at present, the concept of human rights has a big influence on society. As a result, opposition to the death penalty has been widespread and many countries around the world have abolished it. There is enormous pressure on the countries where the death penalty still exists and they are urgently asked to amend the law regarding the death penalty for numerous reasons (Thephdonchai, 2000) or to use an execution method that means that the offender does not have to suffer or be in pain for a long time (United Nations, 2008).

### *The Nature of The Offense Appropriate for The Death Penalty*

Rationalizing which offenses are suitable for the death penalty needs analysis of the appropriateness of the death penalty compared to characteristics of offenses that are expected to be punished with the death penalty through various criteria (Gibbons, 1973) for instance, the principle of laws, the principle of laws and economics, the principle of criminology, and situations for committing an offense for making consideration, details of which are as follows:

1. The principle of laws: Consideration is made on levels of punishment comparing the severity of offenses with the criteria of characteristics of offenses, moral of law, behavior in committing an offense, methods of committing an offense, and effect on victims and society (Na Nakorn, 1989). The death penalty is suitable for use for crimes such as murder, murder on the ascendant, murder by premeditation, murder by employing torture or cruelty, murder for preparing or facilitating the commission of the other offenses, or offenses that cause serious damage to society. Therefore, the offense that should be punished with the death penalty in accordance with the principle of law is the offense of against life and offenses relating to security.

2. The principle of laws and economics: The concept based on laws and economics believes that if a state does not want crime to occur in society, more punishments should be added to be as severe as characteristics of offenses so that the punishments can actually deter crimes. The principle of laws and economics believes the death penalty should be applied to most serious crimes because it can deter other people in society by being afraid of receiving a penalty from committing an offense (Tunnell, 1990).

3. The principle of criminology: It is believed that society is safe from the most serious crimes if the criminal has no chance or ability to commit a crime (Hatch & Walsh, 2016) so capital punishment is the most effective punishment for the offenders who commit the most serious crime.

4. The situations in committing an offense: Situations in committing an offense is another significant factor that has an effect on the severity of offenses. Similar offenses but committed in different situations result in the unequal severity

of offenses. Situations such as riot and war that have an effect on the severity of offense are because these serious offenses not only threaten and destroy the existence of the government and the state, destroy the security of the nation, and its economy, but also cause damage to life, property, subsistence of the people and crime committed in an abnormal situation or circumstances, which may endanger the stability or security of the State, possibly resulting in a state of emergency. Both crimes cause enormous damage, therefore, the death penalty is a punishment that is proportionate to the nature of the offense.

According to the principles mentioned above the offenses that are appropriate and consistent with the philosophy of execution are offenses against life because killing humans shows that the offender has a very evil mind, and crime committed in an abnormal situation or circumstances which may endanger the stability or security of the State, possibly

resulting in a state of emergency. Both crimes cause enormous damage, therefore the death penalty is a punishment that is proportionate to the nature of the offense.

#### *The Types of Offenses Resulting in The Death Penalty in Thailand*

Thailand has as many as 103 punishable offenses with the death penalty based on 5 laws which are (1) Thailand Criminal Code, (2) Military Penal Code, (3) Firearms, Ammunition, Explosives, Fireworks and the Equivalent of Firearms Act B.E.2490, (4) Narcotics Act B.E.2522, and (5) Prevention and Suppression of Prostitution Act, B.E.2539. They can be further divided into 3 categories: petty offenses, serious crimes and most serious crimes details of which are shown in Table 1-3 below.

**Table 1** Types of petty offense resulting in the death penalty in Thailand

Crimes	Law	Section
Offenses Relating to Weapons	Firearms, Ammunition, Explosives, Fireworks and Imitation Firearms Act, BE 2490	78

*Note:* Developed by the researcher

**Table 2** Types of serious crimes resulting in the death penalty in Thailand

Crimes	Law	Section
Offenses Against Liberty	Criminal Code	312 bis (3), 313, 314
Malfeasance in Office	Criminal Code	148, 149, 201, 202
Offenses Relating to Public Danger	Criminal Code	218, 220, 222, 224
Terrorism	Criminal Code	135 (1),(2),(3)
Offenses Relating to Sexuality	Criminal Code	277 bis (2), 277 ter (1), (2), 280 (2), 283 paragraph three and four, 285
	Prevention and Suppression of Prostitution Act, B.E. 2539	12 paragraph two (2), (3)
Offenses Against Property	Criminal Code	339 paragraph five, 339 bis paragraph five, 340 paragraph five 340 bis paragraph five, 340 bis paragraph six, 340 ter
Offenses Relating to Drugs	Narcotic Act, B.E. 2522	65, 66 paragraph two, 93 paragraph five

*Note:* Developed by the researcher

**Table 3** Types of most serious crimes resulting in the death penalty in Thailand

Crimes	Law	Section
Offenses Against Life	Criminal Code	108, 109 paragraph one and two, 110 paragraph three, 111,132, 288
Offenses Relating to Security	Criminal Code	111, 113, 119, 121, 122, 124 paragraph three, 127 paragraph two, 128, 129
	Martial Law	13–19, 27 (1), 29 (1), 30 (1), 31 (1), 36 (1), 38 (1), 42 (1), 43 (1), 46 (1)

*Note:* Developed by the researcher

The provision for both petty offenses and serious crimes punishable by the death penalty is not consistent with the philosophy of the death penalty because it is punishment that is not proportional to the nature of the offense.

## Methodology

The method adopted for this research was a qualitative research by analyzing documents in Thai and foreign languages in the forms of books, textbooks, research documents, articles, laws, regulations, orders, policies and other related documents such as newspapers, and speeches in order to find explanation/solution/on two issues: the characteristics of crime that suit the death penalty and the characteristics of offenses resulting in the death penalty in Thailand.

The researcher conducted an in-depth interview with 15 people who have influence on Thai society in terms of ideas: Those with knowledge and capability in criminology and criminal law, people with power, fame and role and those who have experienced social activities regarding the death penalty, including those who have provided knowledge or vision, opinion, advice, and suggestions about the death penalty and whose academic works on that topic have been published and accepted by society such as in books, textbooks, course materials, research papers, reports of the study, academic conferences on the death penalty and people who took part in the death penalty campaign or provided their opinions in public forums. Furthermore, the selected participants act as role models and are able to influence and convince other people; people in society accept the participants with their personality, behavior, and ideas. Open-ended questions were used to obtain the data as it is considered to be the best method to allow participants to express their opinions, views, attitudes, and perspectives. Moreover, the researcher set questions in some areas in order to get answer to the questions in the way that matches the objectives of the study. When the interview was completed the researcher compiled the interview results of each interviewee and arranged, defined, classified and correlated the interview results in a systematic order.

## Results and Discussion

### *The Characteristics of Crime that Suit the Death Penalty*

From data analysis obtained from review of literature and related studies regarding the issues, it was found that the death penalty should be applied to punish offenders who have committed very serious crimes because these crimes caused a great loss to society. The In-depth Interview was conducted to investigate the attitude of respondents towards types of offense and the characteristics of the offenders compiled from records of the death penalty in Thailand in order to know the types of offense punishable by the death penalty so as to recommend abolishing the death penalty for any inappropriate offenses. The qualitative data of the overall sample attitudes were analyzed to apply as a guideline to abolish the death penalty in some types of offense in Thailand. The data collected from 15 in-depth interviews showed that the death

penalty is suitable in punishing offenders who have committed the most serious crimes, namely; (1) an offense against life because killing someone destroys the highest value of humanity and (2) an offense relating to security such as offense of rebellion and offense under the Military Service Act because these offenses affect the security of the royal institution, the security and stability of the country, the lives of people and the sovereignty resulting in great damage to the country.

As the above mentioned offenses are considered to be serious or the highest degree of offense, the punishment of the offender should be appropriate to the act of the offenders; when the offender committed the most serious offense, he or she will be punished by the most serious type of punishment, called capital punishment or the death penalty, so it will result in security for society from the offender and also prevent other people from committing the crime. The academic who participated in the interviews stated as follows:

*"The appropriate offense for the death penalty is the most serious crimes, namely (1) offense against life because people who kill another have committed deliberate destruction of the highest human value and (2) Offense relating to security because they cause enormous damage to the sovereignty, security, or the peace of the country, as well as hazards to life and property of innocent people. The imposition of the death penalty for both offenses is proportional to the offense...."* (Thammasat University staff, personal interview, May 12, 2017)

The results are also consistent with the research of Pingmuang (2003) which studies the "Indicative Criteria of Death Sentencing ". The findings indicated that the death penalty must be applied to the most serious cases which violate social order and morals of people. Moreover, the results are also consistent with the research by Satjanit (1990) who studied "Death Penalty in the Opinion of Monks Teaching at Mahachule Buddhist University and Mahamonkut Buddhist University." The findings indicated that the death penalty must be applied to the most serious cases which violate social order and morals of people.

### *The Types of Offense Punishable by the Death Penalty in Thailand*

Based on the data analysis, there are 103 offenses punishable using the death penalty in Thailand. They consist of minor offenses, serious offenses, and the most serious offenses. This reflects that Thailand's enforcement of the death penalty is not consistent with the nature of the offense and not consistent with the philosophy and purpose of the death penalty. The offender should be punished with the death penalty only when he or she commits a crime against lives of people and the security of the nation as killing people destroys the highest value of humans and offense against security affects the security of the king and/or the monarchy, sovereignty, the existence of the state, peace, as well as the well-being of the people, which results in enormous damage to the country. However, other offenses such as: sexual, public danger, weapons, and drugs, offenses against liberty and property, terrorism, and malfeasance in office are not appropriate for the death penalty because these offenses are

considered as minor offenses; thus, it is suggested that the death penalty should be abolished for these types of offenses and a new penalty that suits the degrees/level of offense, imposed. The lawyer who participated in the interviews stated as follows:

*“Thailand has too many crimes that are punishable by the death penalty. The offenses that suit the death penalty only are the offenses against life and offenses relating to security because killing people is destroying another life and the offenses against security affect the security of the king and the monarchy, the stability and peace of the country, sovereignty, and the well-being of citizens. Other offenses are not appropriate for the death penalty and deserve to have new punishment to suit the characteristics of crime, imposed”* (The Thai Bar Under The Royal Patronage, personal interview, June 30, 2017)

The research findings are relevant to the research conducted by Sarnsuvan (2013) which studied “The Suitability of the Death Penalty in Criminal Law”. The findings found that most of the offenses punishable by the death penalty in Thailand are not appropriate since they are not in accordance with the philosophy and the principal of capital punishment. Thus, the death penalty should be terminated for such offenses and punished by other methods in accordance with the types of offense.

## Recommendation

As there is an ongoing debate on whether the death penalty should or should not be abolished in Thailand, many factors should be taken into account for consideration. Therefore, a careful analysis of the current situation may help the government to make the right decision, and authorities or the key policy makers should be involved in the decision making process. Although the abolition of the death penalty may not happen in the near future in Thailand, if Thailand is to abolish the death penalty, the process must be carried out carefully in two steps.

1. The first step: The Legislation should consider or revise all the laws related to the death penalty based on the appropriateness of the death penalty designated for each type of offense. The criminal offenses which are punishable by the death penalty should be divided into different categories: serious criminal offenses and the most serious criminal offenses. The offenses against life and offenses relating to security are determined to be suitable for punishment by the death penalty. Other types of offense would not see offender sentenced to death but with a penalty that is appropriate with the characteristics of the offense.

2. The second step: The suspension of the death penalty should be carried out for offenses in which such punishment has been proposed as suitable. The impact of the death penalty suspension will be observed periodically every year in terms of the severity of the offense, the number of offenders and the sense of security of the people in order to observe whether the consequences of the suspension are positive or not and how the impact helps to shape society.

## Conflict of Interest

There is no conflict of interest.

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