



General Assembly

Distr.: General
XX February 2021

English and French only

Human Rights Council

Forty-six session

22 February–19 March 2021

Agenda item 1

Organizational and procedural matters

Joint written statement* submitted by Parliamentarians for Global Action, a non-governmental organization in general consultative status, Advocates for Human Rights, Advocates for Human Rights, International Federation of ACAT (Action by Christians for the Abolition of Torture), Reprieve, Union Internationale des Avocats - International Union of Lawyers, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2021]

* Issued as received, in the language(s) of submission only.

Research Discredits Claims that the Death Penalty Deters Crime

The Advocates for Human Rights and colleague organizations thank the Human Rights Council for dedicating time to discussing human rights violations related to the use of the death penalty under Resolution 42/24, in particular with respect to whether the use of the death penalty has a deterrent effect on crime.

We remind the Human Rights Council that, in the words of the UN Secretary-General, the “death penalty has no place in the twenty-first century.”¹ In Resolution 2005/59, the Human Rights Council called upon all States that still maintain the death penalty to “abolish the death penalty completely.” With regard to the deterrent effect of the death penalty, we would like to draw attention to the words of the UN Assistant Secretary-General for Human Rights: “there is no evidence that the death penalty deters any crime.”²

At its core, the deterrence model operates within a theory of choice in which potential offenders weigh the benefits of committing crime against the costs of punishment. The mere threat of being executed for committing certain crimes purportedly discourages potential criminals from committing those crimes, thereby lowering crime rates. Accordingly, proponents of the deterrent effect of the death penalty argue that capital punishment prevents crime because potential criminals fear execution. In contrast, opponents argue deterrence does not prevent crime, and some argue the death penalty may even increase crime.³

Over time deterrence has transformed from a mere theory of criminal punishment to the backbone of support for capital punishment.⁴ The proper question is whether the death penalty, when compared with other available punishments, such as long-term imprisonment, provides a greater or lesser deterrent effect.

For decades researchers have sought to answer whether the death penalty deters crime. In 1978, Isaac Ehrlich analyzed data on homicides and executions from 1933 to 1969, finding that each execution resulted in in eight fewer homicides. Ehrlich’s research, which has been soundly discredited, has been integral to proponents’ deterrence claims. The flaws of Ehrlich’s study plague similar studies in supporting deterrence claims: the studies misuse econometric techniques and have statistically significant margins of error.⁵ Moreover, during the time period Ehrlich studied, there was an 80% drop in executions which was accompanied by decreasing homicide rates.⁶

Research does not support the theory of deterrence as it relates to the death penalty.⁷ Going back to 1978, the United States’ National Research Council (NRC), concluded that “available studies provide no useful evidence on the deterrent effect of capital punishment” in the United States.⁸ In 2012, the NRC reviewed studies completed since its 1978 report, concluding: “research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates.”⁹

The NRC identified two fundamental deficiencies in studies on the deterrent effect of the death penalty in the United States. First, even where the death penalty is implemented, noncapital sanctions tend to be the most common penalty for crimes. The fact that existing studies do not measure the availability and frequency of noncapital sanctions prevents analyses of whether the death penalty or other sanctions deter crime. Second, studies fail to analyze perceptions of the risk of execution of potential criminals and the behavioral response to those perceptions. One reason existing studies do not analyze the perceptions of the risk of execution is because those perceptions are subjective and researchers have no direct measurements of would-be-criminals’ perception. This data deficiency strikes at the heart of claims that potential criminals’ perception of execution prevents crime. Without data of risk perceptions, researchers tend to assume that potential criminals carefully assess the risk of execution. Together, these two deficiencies are sufficient to make existing

studies uninformative about the effect of capital punishment on crime.¹⁰ The NRC recommends existing studies not be used to inform deliberations on the deterrent effect of the death penalty.

A 2018 report by the U.S.-based Abdorrahman Boroumand Center examined murder rates in eleven countries in the ten years following each country's abolition of the death penalty. The Center found that ten of those countries experienced a decline in murder rates following abolition.¹¹ Interestingly, but unsurprisingly, that finding is consistent with state-level data in the United States which have consistently shown lower murder rates (4.788 per 100,000 people) in states that have abolished the death penalty compared with higher murder rates (6.646 per 100,000 people) in states where the death penalty is still legal.¹²

The Center's conclusion is consistent with a Death Penalty Information Center (DPIC) analysis of murder data in the United States from 1987 through 2015.¹³ DPIC's data also indicated that states that abolished the death penalty after 2000 have lower rates of murders of law enforcement officers.¹⁴ In short, the data showed that "the death penalty doesn't drive murder rates; murder rates drive the death penalty" and that "the rate at which police officers are killed drives the political debate about the death penalty."¹⁵ DPIC's analysis exposes the unfortunate reality that the death penalty and justifications for it are more politically driven than factually supported.

Not only do existing studies not support the theory of deterrence, there remain serious questions about whether anything useful about the deterrent value of the death penalty can ever be learned from studies based on available data.¹⁶ And, as criminologists have repeatedly pointed out, it is difficult, if not impossible, to separate any supposedly deterrent effect of the death penalty from other factors that influence the amount and kinds of crime.¹⁷

There is good reason to doubt that potential criminals change their behavior in order to avoid the risk of execution. The theory of deterrence assumes would-be criminals are in a state of mind that allows them to coolly balance the likelihood of being arrested, tried, and executed. Contrary to the premise underlying deterrence arguments favoring the death penalty, researchers have determined that it is the certainty of being arrested and prosecuted—not the severity of the punishment—that consistently is found to be an effective deterrent. This evidence shows that effective law enforcement is more important than severe penalties in preventing crime.¹⁸

The belief that the death penalty deters crime is just that, a belief. There is no evidence in support of that belief.

We urge the Human Rights Council to encourage all Member States that retain the death penalty to:

- Halt executions;
- Take immediate steps to establish de jure moratoriums on executions;
- Educate the public and policymakers about the research and evidence showing the death penalty does not deter crime;
- Abolish the death penalty; and
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

World Coalition Against the Death Penalty, Abdorrahman Boroumand Center for Human Rights in Iran, Cornell Center on the Death Penalty Worldwide, Center for Prisoners' Rights Japan, Children Education Society (Tanzania), Legal Awareness Watch Pakistan, NGO(s) without consultative status, also share the views expressed in this statement.

1. SG/SM/19478-HR-5426, <https://www.un.org/press/en/2019/sgsm19478.doc.htm>.
2. UN News, 'No evidence death penalty deters any crime,' senior UN official tells Rights Council (4 Mar. 2015), <https://news.un.org/en/story/2015/03/492562>.
3. Some argue executions brutalize society by diminishing respect for life, thereby increasing violent crime. See John J. Donohue & Justin Wolfers, *The Death Penalty: No Evidence for Deterrence*, BERKLEY ELEC. PRESS (April 2006), [http://users.nber.org/~jwolfers/policy/DeathPenalty\(BEPress\).pdf](http://users.nber.org/~jwolfers/policy/DeathPenalty(BEPress).pdf). These studies, however, have many of the same methodological flaws as studies advanced by proponents. See Richard Berk, *Does the Death Penalty Deter Crime?*, UNIV. OF PENN. DEP'T OF CRIMINOLOGY, <https://crim.sas.upenn.edu/fact-check/does-death-penalty-deter-crime>.
4. Michael L. Radelet & Ronald L. Akers, *Deterrence and the Death Penalty: The Views of the Experts*, 87 J. OF CRIM. L. & CRIMINOLOGY 1, 5 (1996).
5. Donohue & Wolfers, *supra* note 3.
6. *Ibid.*
7. See Ethan Cohen-Cole et al., *Reevaluating the Deterrent Effect of Capital Punishment: Model and Data Uncertainty*, NCJRS (Dec. 2006), <https://www.ncjrs.gov/pdffiles1/nij/grants/216548.pdf>.
8. *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*, Nat'l Research Council (1978).
9. DANIEL S. NAGIN & JOHN V. PEPPERS, *DETERRENCE AND THE DEATH PENALTY*, NAT'L ACADEMIES PRESS at 102 (2012).
10. *Id.* at 101.
11. *WHAT HAPPENS TO MURDER RATES WHEN THE DEATH PENALTY IS SCRAPPED? A LOOK AT ELEVEN COUNTRIES MIGHT SURPRISE YOU*, ABDORRAHMAN BOROUMAND CTR (2018), <https://www.iranrights.org/library/document/3501>.
12. *DEATH PENALTY INFO. CTR., SUPPORTING DATA FOR 2017 DPIC STUDY OF MURDER RATES AND KILLINGS OF POLICE*, <https://deathpenaltyinfo.org/stories/supporting-data-for-2017-dpic-study-of-murder-rates-and-killings-of-police>.
13. *Death Penalty Information Center, DPIC Study Finds No Evidence that Death Penalty Deters Murder or Protects Police* (Sept. 12, 2017), https://deathpenaltyinfo.org/news/new-podcast-dpic-study-finds-no-evidence-that-death-penalty-deters-murder-or-protects-police?utm_source=WeeklyUpdate&utm_campaign=91cb631fe1-weekly_update_2017_w38&utm_medium=email&utm_term=0_37cc7e4461-91cb631fe1-344695193.
14. *Id.*
15. *Id.*
16. Richard Berk, *New Claims about Execution and General Deterrence: Déjà Vu All Over Again* (Mar. 2005).
17. Richard Berk, *Does the Death Penalty deter Crime*, UNIV. OF PENN. DEP'T OF CRIMINOLOGY, <https://crim.sas.upenn.edu/fact-check/does-death-penalty-deter-crime>; see also *World Coalition Against the Death Penalty, 13th World Day Against the Death Penalty: Drug Crimes* (Oct. 2015), <http://www.worldcoalition.org/worldday2015.html>; *Parliamentarians for Global Action and World Coalition Against the Death Penalty, Why the Death Penalty for Terrorism-related Offences is Ineffective, Counter-productive and Violates Human Rights*, September 2016.
18. Max Ehrenfreund, *There's Still No Evidence that Executions Deter Criminals*, WASH. POST (April 30, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/04/30/theres-still-no-evidence-that-executions-deter-criminals/>.