



Freedom to Write Index & Writers at Risk Database

Methodology

PEN America's Freedom to Write Index provides a count of the writers who were held in prison or detention during the previous calendar year in relation to their writing or for otherwise exercising their freedom of expression. Writers are, of course, also subject to other types of threats, including censorship, harassment, legal charges without detention, or physical attacks, and PEN America tracks and advocates on behalf of many cases beyond those included in the Index.

Our searchable [Writers at Risk Database](#) includes those cases counted in the Index as well as hundreds of additional cases of writers, journalists, public intellectuals, and artists under threat globally, and is updated regularly.

The cases included in the Index and Database are based on PEN America's own internal [case list](#), PEN America's [Artists at Risk Connection](#) (ARC) case list, and the annual PEN International [Case List](#). Additionally, PEN America draws from press reports; information provided by PEN Centers around the world; reports from the families, lawyers and friends of those in prison; and data from other international human rights, press freedom, academic freedom, and free expression organizations, including Amnesty International, the Committee to Protect Journalists, Freedom House, Frontline Defenders, Human Rights Watch, Index on Censorship, the International Freedom of Expression Exchange, Reporters Without Borders, and Scholars at Risk. Inclusion of a case in the Index or Database does not necessarily constitute a judgment on the factual basis for legal charges brought against an individual. Further information regarding PEN America's evaluation of specific cases can be found in the [Writers at Risk Database](#).

The Index and Database are not presented as exhaustive. There are cases of writers and intellectuals in prison that are not known publicly or about which there is limited confirmed reporting. In instances where new or more detailed information about a case comes to light, PEN America will include cases that would have otherwise been counted in past publications of the Freedom to Write Index. While PEN America will not update previous publications of the Index report or retroactively count cases, the inclusion of these cases will be taken into consideration when calculating future statistics and figures in the Freedom to Write Index, such as in the calculation of year-to-year trends. There are also cases that are known but where family members have specifically requested that the case be kept private. If

readers know of additional cases they believe PEN America should be aware of, you may contact us at ftwc@pen.org and we will review any information provided.

Criteria for Inclusion in the Freedom to Write Index

To be counted in the Freedom to Write Index:

- An individual must spend at least 48 hours behind bars in a single instance of detention between January 1 and December 31 of the calendar year.
- Have been imprisoned at least in part for their writing, or because of their identity as a writer.¹
- Should primarily write literature, poetry, or other forms of creative writing; essays or other nonfiction or research/academic writing; or online commentary. Editors, translators, and publishers of these types of writing may also be included [A full list of professional ID designations is listed below].
- Journalists are included if they also fall into one of the categories above or they primarily write commentary and/or opinion articles.
- Scholars, creative artists, and activists only qualify if they also engage in writing in one of the categories listed above.
- The individual's case must have been reported publicly by the media or other human rights organizations, or we have received consent from either the writer or their family to include them. (If we receive information directly from writers or their families that they do not wish to be included, we will not include them).

Cases counted in the Index include both imprisoned and detained writers. We use the term "imprisonment" when an individual is serving a sentence following a conviction, and the term "detention" when individuals are held in custody pending charges, in pre-trial detention, or in administrative detention. [A full list of status designations is listed below].

¹ In the absence of concrete/direct evidence that a writer is targeted for their speech, we assess the following factors to make a determination:

- Type of charges, which could include charges that are clearly speech-related (propaganda, hate speech, defamation, blasphemy) as well as national security or anti-terrorism laws.
- Circumstances of arrest, e.g. an arrest at someone's home would be considered evidence of targeting
- Family members detained or threatened to pressure targeted individual
- Electronic devices or written materials confiscated
- Social media accounts taken down/deleted
- Family, lawyers, or other credible stakeholders referencing the motive as being related to their expression
- Statements from the arresting authority
- Previous arrests and/or convictions for speech related offenses
- Media reports on the motive of arrest
- Reports/statements by human rights, journalism, or free expression organizations or the United Nations.

Content of Speech:

PEN America does not vet the content of writers' speech. We utilize PEN International's standards as our primary guide, and assess each case on a case by case basis: "The Writers in Prison Committee works on behalf of those who are detained or otherwise persecuted for their opinions expressed in writing, including writers who are under attack for their political activities or for exercising their profession, provided that they did not use violence or advocate violence and racial hatred." In practice, we also include hatred regarding ethnic or religious groups, LGBT issues, and gender in this caveat.

This test means that we include writers whose speech may be offensive and inflammatory, but exclude writers who directly advocate violence or hatred. We make this determination by assessing as much written content as we are able to source and follow as far as is possible the principles set out in the [Rabat Plan of Action](#):

- *Context*: Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility, or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated;
- *Speaker*: The speaker's position or status in the society should be considered, specifically the individual's or organization's standing in the context of the audience to whom the speech is directed;
- *Intent*: Article 20 of the ICCPR anticipates intent. Negligence and recklessness are not sufficient for an act to be an offense under article 20 of the ICCPR, as this article provides for "advocacy" and "incitement" rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience;
- *Content and form*: The content of the speech constitutes one of the key foci of the court's deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed;
- *Extent of the speech act*: Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example by a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public;
- *Likelihood, including imminence*: Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would

succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

Writers at Risk Database Terminology

Active vs Inactive Cases:

Cases in the Writers at Risk Database are designated as either active or inactive. Inactive cases are either those that were resolved satisfactorily based on our internal guidelines on each status designation, or those that haven't seen any new negative developments in the past three years. All other cases are considered active. The Writers at Risk Database includes a record of cases PEN America has worked on over several decades; as a result, some cases have been inactive for years but remain in the Database for historical purposes.

Country Designations:

Each case is tagged with a country tag, most often based on where the threat occurred geographically, or under which government's authority a writer is being detained. In most database cases, the country where the threat occurred and the government with authority are the same entity.

If that territory is disputed, the country tag is determined by the perpetrator/ or group holding authority over the geography. For example: Oleg Sentsov, a Ukrainian writer and creative artist was detained in Crimea by Russian occupying authorities and imprisoned in Russia. His case is tagged as Russia in the database. Writers arrested or threatened by Israeli authorities in Israel are tagged as Israel; writers arrested or threatened by Israeli authorities in the West Bank or Gaza are tagged as Israel/Occupied Palestinian Territory; writers arrested or threatened by the Palestinian Authority, Hamas, or another faction are tagged Palestinian Territories. There are also different tags for cases related to China that include the autonomous regions of Xinjiang, Tibet, Hong Kong, Inner Mongolia, and Macau.

For the purposes of counting the total numbers of cases in the Index by country, the total for Israel includes both cases tagged as Israel as well as cases tagged as Israel/Occupied Palestinian Territory. The total number counted under China includes both China as well as cases tagged under China's autonomous regions of Xinjiang, Tibet, Hong Kong, Inner Mongolia, and Macau.

Professional Designations:

The following professional designations are used in the database. Some cases have more than one designation. The definitions also take into consideration how an individual defines their professional identity, and how they are categorized by other organizations or the media.

LITERARY WRITER: authors of fiction, novels, essays, memoirs, biography, book-length non-fiction, short stories, literary criticism, children's books, and satire.

POET: writers all forms of written poetry or verse.

DRAMATIST: playwrights and screenwriters.

SINGER/SONGWRITER: songwriters, lyricists, and rappers.

SCHOLAR: academics and researchers with written academic or non-fiction work.

CREATIVE ARTIST: painters, installation artists, mixed media artists, sculptors, art critics, curators, cartoonists, musicians, singers, actors, photographers, film/theater directors and producers, and other performers and cultural professionals.

EDITOR: editors of literary and academic works.

TRANSLATOR: literary translators and linguists.

PUBLISHER: literary publishers or founders of publishing houses.

JOURNALIST: non-fiction writers in periodical print publications like newspapers, newsletters, and magazines and those with any title of journalist, including freelance; script and screen writers for non-fiction video (TV/video news and documentary, audio productions on radio or podcasts); photojournalists; satirist for periodical publication; periodical editors; owners of news media (print, video, audio); documentarians/documentary filmmakers; website moderators; and columnists.

ONLINE COMMENTATOR: Blogger or social media commentator who writes original opinion-based original content, including analysis and/or commentary (rather than posting videos, reposting content, or sharing and reporting of news or information).

We have developed further criteria that we consider in determining whether someone qualifies as an online commentator:

- Do they write original content expressing creativity, opinion, analysis, or arguing a position?
- Is online commentary their primary profession/outlet and/or do they have a consistent history of online commentary?
- Do they have a significant audience on the platform/s they write on?
- Are they using social media to drive and influence public thought and opinion?

Status Designations:

The below designations are used to classify cases included in the Writers at Risk Database. The designations are listed below in descending order of gravity. Where multiple designations are applicable in a given case, that case is listed with the most serious designation applicable, using the hierarchy below.

MURDERED: Premeditated or not premeditated killing of a writer in direct retaliation for their writing. The murder can be carried out by state or non-state actors. Reasonable suspicion is sufficient to establish motive.

CUSTODIAL/WRONGFUL DEATH: Writer died in custody (including in hospital while under guard) in circumstances where conditions in prison may have contributed to their demise, including medical neglect or denial of adequate care, or deteriorating health due to prolonged hunger strike. Also includes cases where a writer died shortly after release from custody (3 months) and where circumstances of their imprisonment, detention, or other form of custody may have contributed to their death.

DISAPPEARED: Disappearance carried out by state authorities or with their acquiescence, or by non-state actors; abducted or killed but no body has been found. In addition to writers who are suspected to be detained but no official statement was issued from authorities to confirm the arrest.

IMPRISONED: Individual is serving a prison sentence after conviction in relation to their writing/art/exercise of free expression. Includes those who have been sentenced and are in prison while an appeal continues to take place.

DETAINED: Individual is being detained pending charge or trial or without charge/where there is no intention to charge them. Includes those held in administrative detention for more than 48 hours, under judicial investigation, or potentially facing charges but where trial proceedings have not yet started.

ON TRIAL: Individual is currently on trial, i.e. hearings in the case have started or are taking place (even at irregular intervals) or the judicial process or an appeals process is still ongoing. NOT currently detained.

DISPLACED/IN EXILE: Writer has faced threats due to their writing/expression and is living outside the country of original threat to avoid further threats/harassment/imprisonment/ongoing legal charges. This can include cases where a threatened writer is either on a temporary, non-immigrant visa, or is in the process of seeking asylum or resident status in another country, or has been forcibly exiled by authorities in the country of origin and/or stripped of their citizenship. Other key factors for this designation include the writer's inability to go back to their country of origin/prosecution for fear of repercussions. *[Ideally this designation would be used and the country of exile specified where we can personally verify the writer's willingness to be listed as "Displaced/In Exile" or where they have publicly referred to themselves as exiled or living outside their country of origin.]*

UNDER THREAT: Individual has received threats intended to make them desist from writing/creating art, and/or who has been physically attacked through use of force or violence causing injuries to the individual or destruction of personal property, e.g. arson.

CONTINUED HARASSMENT: Individual is facing varied and persistent forms of harassment or intimidation, including but not limited to: brief detentions of fewer than 48 hours; dismissal from employment where it is linked to their work; coordinated online abuse; censorship or banning of their

creative work; legal charges have been filed but trial hearings have not taken place; judicial harassment, e.g. repeated arrests or summons for questioning, investigations suspended that can be reopened at any time; economic, tax, or financial investigations.

CONVICTED: Individual has reached the end of the judicial process, has been sentenced, but has not been imprisoned due to having a suspended sentence or some other circumstance, such as a conviction in absentia.

RECORDED HARASSMENT Writer has faced past (>2 years ago) instances of intimidation, which could include: brief detentions of fewer than 48 hours; dismissal from employment where it is linked to their work; judicial harassment, e.g. repeated arrests or summons for questioning, investigations that can be reopened at any time; economic, tax, or financial investigations.

Writer is either no longer facing harassment, is no longer engaged in their work/writing publicly, or is no longer living in the country where harassment originated and is not facing extraterritorial, online/digital threats from their country of origin or extremist groups but continuing to engage in their work/writing.

CONDITIONAL RELEASE: Individual has been released from imprisonment/detention, but remains subject to some type of restriction, including a suspended sentence, house arrest, travel ban, restrictions on work or movement, regular reporting to police, etc.

RELEASED: Individual has been released from prison or detention as a result of an acquittal, reaching the end of their sentence, a successful appeal of conviction, as part of an amnesty or as a political gesture, or other reason.

ACQUITTED Writer has been acquitted of all charges, in a case where the writer was never detained or imprisoned. All charges or sentences are overturned, either due to a successful appeal of a conviction, as part of an amnesty or as a political gesture, or other reason.

DECEASED: Died of disease/natural causes, while free, while case was either active or already resolved.