



RESOLUTION ON THE DEATH PENALTY

While the death penalty is inhumane, cruel and unjust, it is a fact that it has become less prevalent over the past two decades. Nevertheless, it continues to have a profound impact in many states. Roughly one third of the world still has capital punishment on the books, and the number of death sentences handed out in these countries reached a record 3,117 in 2016.¹

The death penalty continues to be used for 'offences' relating to freedom of expression such as 'blasphemy', 'apostasy' or same-sex sexual relations. It is also used to punish various forms of treason, national security offences or vaguely-worded 'crimes against the state'. In some countries, the application of the death penalty is a state secret, and official figures on the extent to which the death penalty is used are not available, thereby preventing an open, public debate about capital punishment.

Around the world, writers still live under the daily threat of being condemned to death for peaceful exercise of their freedom of expression. For example, in **Mauritania** in 2016, an Appeals court in Nouadhibou upheld the death sentence for Mauritanian blogger and freelance journalist Mohamed Cheikh Ould Mohamed, who was convicted of apostasy in 2014. In **Yemen**, journalist Yahya al-Jubaihi, detained arbitrarily since September 2016, has been sentenced to death for allegedly communicating with Saudi Arabia-led coalition forces. In April 2017, **Turkey's** President Erdogan announced he would restore the death penalty, of particular concern the country with the largest number of writers in prison. Further examples are Iran, Saudi Arabia, and China. While the practices of execution of the capital punishment vary in their ferocity from country to country, what is common to all of them is the complete disregard for human dignity.

PEN International has consistently opposed the use of the death penalty against writers throughout the history of the organisation, from Federico Garcia Lorca and Arthur Koestler in the 1930s, and Arthur Miller's successful intervention in 1967 to have the death sentence of Wole Soyinka overturned, to its high-profile campaigning and protests against the death sentence and execution of Ken Saro-Wiwa in Nigeria in 1995.

Capital punishment is often used by governments to deter any form of opposition. Capital punishment stands in the way of freedom of expression, without which the critical spirit necessary for the development of any form of culture cannot emerge. Faced with the real threat of execution, writers and journalists are deterred from writing about any subject matter that may be deemed counter to the majority religious ideology in the country.

Article 19 of the International Convention of Civil and Political Rights enshrines the universal right to freedom of expression. It stipulates that this right may only be curtailed in two

¹ The death penalty may be applied under international law for 'most serious crimes' which are generally understood to be restricted to intentional killing.

circumstances, i) if the expression entrenches on the rights and reputations of others; ii) for the protection of national security, public order, public health or morals. PEN believes that neither of these conditions are engaged by expressing ideas about religion. A society's values and morals are not stifled through public debate, rather they are enhanced by it.

Furthermore, even if the conditions in Article 19 were engaged, capital punishment as a penalty is overbroad. Under Article 6(2) of the ICCPR, "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." Crimes of blasphemy and apostasy should not, indeed cannot be placed at the level of 'most serious' given the heinous crimes that still exist in all nations.

According to Article 19 of the Universal Declaration of Human Rights, everyone has the right to "hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." In societies where the threat of death places a chill on public debate, the general public will be deprived of this right, as they cannot expect to receive comprehensive, unbiased information from their writers and journalists.

PEN International recognizes that the victims of violent crimes and their families have a right to justice, without recourse to the death penalty. But there is no credible evidence that the death penalty deters crime more effectively than a prison term.² It is frequently applied as a knee-jerk reaction in the aftermath of violent attacks but may make martyrs out the perpetrators. All too often, it is imposed after unfair trials, including in trials where 'confessions' extracted under torture or other duress are accepted as evidence. In, in view of the fallibility of human justice, recourse to the death penalty inevitably carries a risk that an innocent person may be killed, and it cannot be tolerated.

The Assembly of Delegates of PEN International calls on all retentionist states:

- To establish a moratorium on executions with a view to abolishing the death penalty;
- To progressively restrict the use of the death penalty;
- To reduce the number of offences for which the death penalty may be imposed and to ensure that the death penalty is not imposed for non-violent acts such as freedom of expression or belief which do not meet the criterion of 'most serious offences';
- For states to make available relevant information with regard to their use of the death penalty, which can contribute to informed and transparent national debates on the issue of capital punishment.

² See *Deterrence and Public Opinion* by Carolyn Hoyle and Roger Hood in *Moving Away From the Death Penalty: Arguments, Trends and Perspectives*, Office of the High Commissioner for Human Rights, 2015