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SILENCING THE MESSENGER

STORIES OF TEN JOURNALIST ATTACKS IN SOUTHEAST ASIA



Silencing the Messenger: Stories of Ten Journalist Attacks in Southeast Asia

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PREAMBLE

They can shut us up, but not the truth.

My dear colleagues and journalists,

As I write the opening remark for this important ebook, my thoughts turn to Muharram M. Noer, my mentor in journalism. He was the one who said that being a journalist means having one foot in the grave, emphasizing the dangers of the profession.

“You have to be very careful. Your life is uncertain. Journalism means you write and publish stories that might harm bad people, and they are willing to do anything to shut you up,” Muharram told me.

Muharram passed away in 2004, not because his articles made people angry—as he always cautioned me to be careful—but because of the Aceh tsunami. He was in front of a prison in Banda Aceh, taking some photos, when the giant wave washed him away. There was no information about his remains, but I am very sure he died happily because he was doing journalism until the end of his life.

However, his advice on journalism remains intact in my memory, even today.

Journalism is indeed not an easy profession. Around 120 journalists and media workers, including 11 women, were killed in 2023, according to the International Federation of Journalists (IFJ) on 31 December 2023. Of that number, 68% of journalists and media workers killed worldwide were victims of the Gaza conflict. The coalition of Press Freedom Monitoring in Southeast Asia (PFMSea) has published their findings about the violation against Southeast Asian journalists, which reported around 203 cases against them from killing until the closing down of media. This is a heartbreaking fact, showing that no one can protect us, including the government, when we do our respected job.

Journalists are vital as they have an important duty to uphold democratic standards and shed light on the truth. Journalists work for the public independently. They produce facts through rigorous checking and rechecking, balancing information, and confirmation. Much of the information gained from this process might upset certain people whose sins mar their reputations after the stories are published.

This is not an easy path to cross, and I believe the stories of the 10 journalists attacked in Southeast Asia in this e-book will show us how hard it is and remind us of their contributions to journalism.

The book contains 10 stories of attacks on journalists in six countries, told by members of the PFMsea coalition, comprising Aliansi Jurnalis Indonesia (AJI, Indonesia), Association Journalist Timor Leste (AJTL, Timor Leste), Cambodian Journalist Alliance Association (CamboJA, Cambodia), Centre for Independent Journalism (CIJ,

Malaysia), National Union of Journalists of the Philippines (NUJP, Philippines), and Prachatai (Thailand). This report also includes a story shared by colleagues from an independent media outlet in Myanmar, Mizzima.

The stories not only highlight the vulnerable position of journalists but also how these organizations advocated for them.

The cases vary, from physical violence to digital violence. The impact of advocacy also varies, from winning in court to losing right from the beginning.

This ebook will teach us that although it is not easy, journalists should not lose hope and must keep fighting for their rights.

In Indonesia, we have a famous quote: "Say it even if it's bitter." This quote remains relevant for journalists today.

Last but not least, happy reading, and I hope we can all take something valuable from these journalists' precious experiences in the book.

Regards,

Nany Afrida

President of AJI Indonesia

SUMMARY REPORT FOR 10 IN-DEPTH STORIES OF PROMINENT ATTACKS ON JOURNALISTS IN SOUTHEAST ASIA

Introduction

The rights and freedoms of a country's media practitioners—and the enabling environment within which they are able to operate with efficacy—have become one of the proverbial canaries in the coalmine that warns of the health of democratic institutions and processes in a country. A free press is a central pillar of democratic societies, evidenced by journalists who are able to safely and freely tell timely, reliable and credible stories—which is why Sustainable Development Goals Target 16.10 is so important: to “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”

Despite the global recognition that “What gets measured gets managed” in the formulation of the 2030 Agenda for Sustainable Development indicators, the refrain “not enough data” has become all too prevalent in the monitoring. Indicator 16.10.1: ‘Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months’ captures a particular aspect of the problem of shrinking civic spaces and the attacks on its defenders.

In 2022, the Committee to Protect Journalists (CPJ), a US-based global network to promote press freedom worldwide, recorded a total of 468 incidents involving the killing, imprisonment, and disappearance of journalists, all of which are directly related to press freedom issues. This number has increased significantly, rising to around 387 incidents compared to those that occurred in 2021. In 2023, the Press Freedom Monitoring in Southeast Asia ([PFMsea](#)) coalition documented a total of 203 incidents involving media and journalists in six Southeast Asian countries.

While journalists and media organisations on the ground are well familiar with the lived experiences that serve as anecdotal evidence for the importance of media freedom, systematic monitoring could help to paint a clearer picture for policy makers and the general public of the true extent of the problem and its connection to building stronger institutions and more effective protections of human rights, justice and sustainable development.

This report aims to fill some of that gap, by highlighting 10 stories of attacks on journalists in six countries, told by members of the PFMsea coalition, comprising Aliansi Jurnalis Indonesia (AJI, Indonesia), Association Journalist Timor Leste (AJTL, Timor Leste), Cambodian Journalist Alliance Association (CamboJA, Cambodia), Centre for Independent Journalism (CIJ, Malaysia), National Union of Journalists of the Philippines (NUJP, Philippines), and Prachatai (Thailand). Furthermore, these stories

include the advocacy strategies used to continue shining the light on cases of violence against journalists and media practitioners, who often act as the bulwark against cultures of corruption and impunity, rising authoritarianism and suppressed civic spaces.

Summary of Trends

The stories sample a range of the challenges, in varying degrees, to press freedom in six countries in Southeast Asia. What they have in common is the role of journalists and media practitioners who are on the frontlines of monitoring, covering and exposing issues of corruption and government accountability, broken institutions, disenfranchised court systems and processes, ineffective redress mechanisms, and quotidian impacts on not just journalists but also the people.

As a result of their work, media and journalists have encountered a range of attacks, harassments and intimidations, from digital and physical violence, including cases of gender and sexual harassment, to legal harassment. Such attacks come from both state and non-state actors, including supporters of individuals identified in investigative reports comprising members of the general public. The continuous assault on and corresponding lack of protections for journalists has resulted in suppression of voices and opinions, self-censorship, and impunity – all of which negatively impact freedom of expression and freedom of the press.

In **Cambodia**, the last independent media outlet Voice of Democracy was shut down in 2023, as part of a systematic crackdown that started in 2017. Such outlets had been important platforms for exposing sensitive issues like land conflicts, natural resources issues, and evictions, that were not otherwise covered by government-owned media outlets. The lack of press freedom is situated within a larger authoritarian environment, the chilling effect of which, as one of the stories notes, is that “[c]ivil society groups have noted the government's sustained assaults on free speech have created a pervasive culture of ‘self-censorship’ and fear among journalists, both online and offline, eroding the right to freedom of expression.”

In **Thailand**, the military crackdown in response to the Redshirt protests in 2010 led to the killing of two foreign journalists covering the protests. Despite multiple court inquests to determine the culpability of security forces for civilian deaths, none resulted in legal actions that were able to hold accountable those responsible. Similar to its neighbour Cambodia, the suppression of media freedom was closely linked to diminished access to justice under a military regime that was not held accountable for its attacks on journalists, and the inertia of the justice system.

In **Indonesia**, the issue of cybersecurity has become an urgent concern for media outlets not just in the country but also across the region. Narasi TV faced digital attacks, hacking and death threats after publishing their investigation of cases of corruption involving the state intelligence agency. This incident was one of several as digital attacks become more prevalent, in part due to insufficient safeguards that have been put into place by the relevant authorities to ensure media outlets are able to operate

without fear or favour. In fact, the second story from Indonesia illustrates how the police officers held responsible for the beating of a journalist were brought to justice, thanks in part to sustained advocacy by civil society, thus setting “a positive precedent for holding police perpetrators of violence accountable and ensuring their conviction and condemnation.”

In the **Philippines**, more alarmingly, a culture of impunity for state-sanctioned perpetrators of violence against journalists has created a dangerous environment for holding power-holders to account. A radio talk show host known for highlighting stories of corruption and hard-hitting commentaries was assassinated in a plot orchestrated by high-ranking officials in the Bureau of Corrections (BuCor). While one of the conspirators was found guilty, the main instigators remain at large. The other story chronicled the Maguindanao massacre, where 58 people, 32 of them journalists covering a gubernatorial election, were waylaid and executed, in what was considered to be the deadliest attack on independent media in the world. In both incidents, while some families and victims were able to access the legal system in the pursuit of justice, the majority of the alleged perpetrators were not held accountable for their actions; for many of the families, justice delayed remains justice denied.

Timor-Leste holds the rank of the No. 1 country in Southeast Asia for press freedom, and among the top 10 globally. However, of growing concern are attempts by the state to introduce legislation that may negatively impact freedom of expression and incidents of intimidation following coverage of corruption, in the form of summons and multiple legal proceedings. Strong advocacy from civil society has had a tangible impact, as the distinction of being most free has become another tool for advocates to leverage against threatened legislative rollbacks, even as they themselves continue to be dogged by social media attacks.

These incidents serve as important documentation of the targeting, harassment and violence against journalists and media practitioners for the purposes of making transparent the challenges they face. But these stories also ought to be considered as profiles in courage by journalists, civil society and even the general public who fight and persevere towards the safeguarding of press freedom, holding perpetrators to account, and securing the pathways to justice for victims of violations. Continued advocacy is crucial to provide a check-and-balance to the wielders of power as well as to keep at bay encroachments on freedoms of expression and the press that hold up the sustainability of democratic processes in Southeast Asia.

TABLE OF CONTENT

PREAMBLE.....	i
SUMMARY REPORT.....	iii
TABLE OF CONTENT.....	vi
CAMBODIA	
<i>Press Freedom in Cambodia Remains at Stake Following the Closure of VOD,</i> <i>By Khuon Narim, Cambodian Journalists Alliance Association (CamboJA).....</i>	1
Shrinking space for independent journalists	2
Declining number of media outlets	3
Threats against journalists	4
Current Media Landscape and the Future	5
About Cambodian Journalists Alliance Association (CamboJA):	8
INDONESIA	
<i>Hacking and Intrusion in Narasi TV,</i> <i>By Abdul Manan, The Alliance of Independent Journalists (AJI) Indonesia.....</i>	9
Safeguarding Freedom of the Press	13
<i>Journalist Harassed at Graha Samudra,</i> <i>By Abdul Manan, The Alliance of Independent Journalists (AJI) Indonesia.....</i>	16
Attacked in the line of duty.....	17
Consistent advocacy for accountability.....	19
A small victory for press freedom.....	21
About the Alliance of Independent Journalists (AJI) Indonesia:.....	22
MALAYSIA	
<i>Case Analysis of Mkini Dotcom Sdn Bhd (Malaysiakini),</i> <i>By Centre for Independent Journalism, Malaysia.....</i>	23
Analysis of Legal Issues in the Press Summary (Majority)	26
Post-Selective Case-Censorship Effect?	27
Recommendations: Strengthening Media Freedom in Malaysia.....	28
Conclusion.....	29
About Centre for Independent Journalism (CIJ):	29
MYANMAR	
<i>The Myanmar Junta's Brutal Message to Media,</i> <i>By Penrose Thitsa, Representative of Mizzima.....</i>	30
Drone of dissent: Filmmaker's life sentence	30
Shin Daewe's case exemplifies junta's assault on media freedom	31
From NGO films to festival acclaim: The rise of filmmaker Shin Daewe	32
Insights into prison visits.....	32
Impacts on family members.....	33
A talented filmmaker and compassionate humanitarian	34
Fears for filmmaker's safety.....	34

Denial to due process and a fair trial	35
Echoes of longing	36
About Committee to Mizzima:	37

THAILAND

Justice For Two Foreign Journalists Killed During Protest, By Teeranai Charuvastra, Prachatai..... 38

Battlefield Bangkok	39
A brief flicker of light	41
Memory hole	42
'History can be revived'	44
About Prachatai:	45

TIMOR LESTE

Freedom of the Press, Freedom of Expression and Future Threats in Timor-Leste, By Zevonia Vieira and Alberico Junior da Costa, The Association Journalist Timor Leste (AJTL)..... 46

Digital attacks a threat to press freedom in Timor-Leste.....	46
Harassment of online media and journalists	47
Democracy, freedom of the press and freedom of expression	49
Advocacy and campaigns	49
Hatutan Online's case.....	50
About The Association Journalist Timor Leste (AJTL):	51

THE PHILIPPINES

Maguindanao Massacre, Fourteen Years of Injustice, By Alyssa Mae Clarin, the National Union of Journalists of the Philippines (NUJP)..... 52

The massacre	52
The aftermath of the carnage	54
Deaths and delays during trial period	55
A long fight against injustice	56
The 58th victim of the massacre	56
Fourteen years of partial justice.....	57

The Case of Percy Lapid, By Alyssa Mae Clarin, the National Union of Journalists of the Philippines (NUJP)..... 59

The murder	59
Hard-hitting truth teller	59
The aftermath	60
The timeline of the Kill Contract.....	61
Justice delayed	62
Continuing the legacy	63
About the National Union of Journalists of the Philippines (NUJP):	64

Civil society groups have noted the government's sustained assaults on free speech have created a pervasive culture of “self-censorship” and fear among journalists, both online and offline, eroding the right to freedom of expression.

Shrinking space for independent journalists

Former VOD reporter, Mom Moniroth revealed disappointment over the shutdown of VOD and the worsening restrictions on freedom of expression.

“There isn’t a full implementation of press freedom and it is especially narrowed for [independent] journalists. With regards to freedom of expression on social media, we can’t fully exercise the rights of citizens.”

“When we see an inactive issue or another thing happen, we want to exercise our opinion but we can’t because they have used laws [incitement] against us, and we are worried about accusations,” Moniroth said. “It is unsafe.”

On February 14, VOD officially stopped broadcasting, and then-Prime Minister Hun Sen offered government jobs to those at VOD who had lost theirs due to the closure. Twenty five individuals applied, but many didn’t due to dissatisfaction towards the actions taken by the government that forced the closure of VOD.



Picture 2: A group of human right activists gather in front of VOD’s office in protest against the government’s decision to revoke VOD’s license on February 13, 2023. (Source: CamboJA/Pring Samrang)

Moniroth, who decided not to take the government job, expressed concern for security and safety, worried authorities had been monitoring his movement.

He said some people had tried to lobby him to take a government job, but he had rejected the idea because he likes reporting and working independently.

“For myself, I received threats from competent authorities who dressed in civilian clothes to monitor me. Sometimes they were standing in front of my house, and even now those authorities are still monitoring me; so it is a threat to my spirit.”

“Indeed, we are worried, but because we know we have done nothing wrong, we will keep carrying out our daily work,” Moniroth continued.

He has highlighted the Kamnota database as a successor to the independent information platform of VOD, especially as Radio Free Asia (RFA) and 16 other media outlets had their websites temporarily blocked before the 2018 elections. The Cambodia Daily was also forced to shut down due to a large tax bill in 2017.

The government’s job offers to former VOD reporters are just another way to shrink space for independent journalists.

Declining number of media outlets

Another reporter, Khut Sokhun, joined as a trainee reporter at VOD in 2014, and now works to train community citizen journalists. He shared the same perception of declining press freedom.

“It is very restricted, because nowadays, anyone who dares to write something critical of officials or something that has an impact on officials will receive threats. It doesn’t matter if it affects low-level officials, but if they go near high-level officials, they will definitely be harassed and receive threats,” he said.

He has observed that after the closing of VOD, despite the high number of media outlets in the country, there are not enough independent media outlets left to report on social issues, and issues related to human rights, land conflicts, and natural resources.

As VOD broadcasts from abroad, Sokhun has expressed concern about his security since a friend of his keeps asking for his job and to provide any information from overseas.

“My friend [police officer] asked me again: ‘Where do you work now? And what is your job?’ Or, ‘Have you reported information?’”

Sokhun was worried after reopening VOD abroad; he is no longer involved with VOD, but is working on a project on training instead.

“The current press freedom is not better. Although we have a lot of media outlets, as we have mentioned, there are very few [media outlets] who dare to report on social issues and criticize the government,” Sokhun said.

“When they have restricted the rights like that – not allowing us to operate even one media outlet to broadcast [independently]- how can we improve the situation? I think there is no way for there to be a better press freedom situation.”

He said to improve the situation, the government must restore freedom of speech in Cambodia, allow VOD to reopen, and cease threatening journalists.

Threats against journalists

From 2020 to 2023, CamboJA recorded 152 cases of harassment, intimidation, violence, and imprisonment, affecting 266 journalists. During that period, CamboJA recorded 36 cases of legal action taken against journalists, and 81 journalists jailed.

Khan Leakhena, another former reporter of VOD, decided to flee from Cambodia after receiving text message threats for deciding not to work at a state institution, a position offered by the head of the government.

“I suffered threats, and discrimination, and officials urged me to work with the government,” She told CamboJA via social media from the United States.

Leakhena read from a text message: “They said in [SMS] if I did not join the government, I would be in trouble.”

She added that the government still restricts independent media and launches accusations when independent reporters who disseminate their news.

Two weeks after the closing of VOD, she fled to Thailand. She came back to Cambodia in April to work at Cambodian Center for Independent Media (CCIM). In July, she resigned from the media institution and departed to Europe. Now, she works as a reporter for Radio Free Asia based in the United States.

“They [authorities] have asked my parents about me, and I told them don’t be worried,” Leakhena said.

“The closure of VOD hasn't only impacted its staff; the public are also being victimized due to land violations from tycoons and powerful men in Cambodia. There are no media outlets that dare to report anymore,” she continued. “After the shutdown of VOD, CamboJA itself was threatened with closure. It threatens press freedom.”

Declining press freedom threatens good governance

Nhim Sokhorn is editor-in-chief of VOD, and broadcasts from abroad. He said Cambodia’s press freedom in the aftermath of the closure of VOD “Is almost zero and in decline.”

He said independence has played an important role in urging the government to have transparency and good governance.

Due to personal security and threats, Sokhorn fled to Thailand about a month and a half after the closure of VOD, and later came back to work as a trainer at CCIM for some three-months before departing to the United States.

He realized that he could not take action under the current environment. In Cambodia, political tensions make it hard to report accurate information. After the shutdown of VOD, Sokhorn experienced an unsettling incident near his house in Phnom Penh where unidentified, masked individuals took photos of his motorbike license plate. After the incident, he went to stay in his hometown in Kampong Cham province’s Chhoeung Prey district. During this time, two suspicious people came to inquire about buying his land.

After these two incidents, Sokhorn's management granted his request to leave Cambodia. Sokhorn said he felt coerced into work as a trainer under unjust circumstances: "We know power rests with just a few rulers," he said, citing the ruling Cambodian People's Party (CPP) control over courts and legislative institutions.

In 2003, VOD began airing under the Cambodian Center for Human Rights (CCHR). CCHR was founded by former opposition Kem Sokha, and then split in 2007, when VOD was placed under the umbrella of the Cambodian Center for Independent Media (CCIM), managed by Pa Nguon Tieng. He is now the publisher of VOD abroad.

A CamboJA reporter tried to contact former VOD staff who have applied and are now working at government jobs, but they declined to give comment due to fear of blame or losing their job.



Picture 3: Journalists cover while security staff restricted access around the Appeal Court as police vehicles escorted Kem Sokha to his hearing on February 8, 2024. (Source: CamboJA/Pring Samrang)

Current Media Landscape and the Future

Since more independent media outlets closed in 2017, most of the country's media outlets are owned by government-linked private entities.

CCIM tried to establish a new public access information database called Kamnotra. The database has information about government decisions, and analysis of land conflict across the nation. It was blocked in July 2023; however, as of now, this platform is still active.

According to CCIM executive director Chhan Sokhuntea, VOD is to continue broadcasting from overseas, and unaffiliated with CCIM.

“VOD abroad is no longer under the control of CCIM,” she said, adding that Pa Nguon Tieng had resigned from the institution, and is in charge of VOD abroad.

She has observed sensitive issues such as land conflicts and deforestation have not been reported by other media outlets.

“[With the closure of VOD] We saw less reporters who dared to disseminate information on sensitive issues,” Sokhuntea said.

“We have also seen that those who published sensitive issues were getting direct threats from the Information Ministry and other relevant ministries, so it made reporters and media outlets scared. They have to be cautious to verify contents before publishing articles,” she said.

“Everyone has self-censored; even if we have seen something with our own eyes, we can’t share this on social media. We reporters are hesitant to write the information because before we write we have to think about the risk for media institutions or attacks on reporters.”

She said that now journalists who have wished to report the news are afraid, and it is difficult to find media institutions to work for as professionals, making it hard to make a career out of reporting.

“I dare not make a conclusion as to whether the situation is better or worse,” Sokuntea said. She pointed to 2017; at which time there were a lot of journalists who reported sensitive issues like land conflicts, natural resources issues, and evictions.

She has also observed that there are a lot of journalists who have registered with the Information Ministry but who have only seen their stories about inauguration ceremony events published.

Sokuntea said there are about 10 people from the former VOD newsroom who are now working at CCIM. They do not dare to work as reporters anymore, they work as trainers and provide training to citizen journalists and youths who wish to become reporters.

“It has made them concerned about their security and safety if they want to return to the field as reporters,” she said.

Sokhuntea said that in the future, if the standard of journalism continues to decline, citizens will face problems in accessing true information, even if there are independent media outlets who are not afraid to report the truth.

“I think there are less reporters who dare to report on sensitive issues because there is a restriction, there are also threats and accusations made against journalists and media institutions.”

“The situation remains in limbo [restrictions] or worse than this. I think the number of [independent] journalists will decline in the future,” Sokuntea said.

She added, those who do report sensitive issues or who have aimed to establish independent media are afraid, including reporters themselves.

“I want the new government, especially the Information Ministry, to open freely for journalists and media outlets to report sensitive issues and social issues, and to not be restrained,” she said.

However, the government spokesperson Pen Bona claimed that the shutdown of VOD, which broke the law, does not impact press freedom in Cambodia, noting that professional journalists write balanced news for their readers, and assess the situation as a whole.

“It is not right to take tens of thousands of journalists as the hostages of a few journalists [VOD] who didn’t respect Cambodian law,” he said.

“Please give a voice to the majority of the press,” Bona said. He said Cambodia has more than 2,000 registered media outlets, and there are tens of thousands of journalists working freely, including at CamboJA.

“Why bring up a single media outlet and make a conclusion about the state of press freedom across the country?” he asked.

Interior Minister spokesperson Touch Sokhak denied allegations by former VOD reporters that accused authorities of monitoring their activity and making threats regarding their safety and security.

“There is no evidence showing authorities have threatened their safety and security, and I think the authorities have clearly known duties and they [authorities] understand individual rights and freedom,” he said.

“They [authorities] can’t do such a thing, but I am concerned that those [VOD reporters] expressed their own feelings and make this subject more controversial in order to have a voice to achieve their goal of a political agenda,” Sokhak said.

He urged them to show solid evidence and file a complaint to police officials and let police carry out investigations according to the law. He added that they should have avoided raising it up as a concern with baseless evidence, and for confusing the public and accusing the authorities.

He explained that the armed forces have conducted their roles and patrols based on designated targets, and move along the streets to prevent offenses. Sometimes the public misunderstands and accuses authorities of monitoring their activity, when in fact what they saw was authorities in uniform, riding motorbikes or in vehicles to patrol.

“They carry out this activity normally; it does not mean they have targeted VOD staff,” Sokhak said.

“Authorities do in general [patrol], it might be their own feelings, or a shadow, and sometimes they link them together and tell you to produce a story for publishing and put a negative light on the police,” Sokhak said.

CCHR executive director Chak Sopheap saw the closure of VOD as part of “a larger crackdown” on the free press which began when most of Cambodia’s independent media outlets were shut down under the de facto government in 2017.

“Revoking VOD’s license hampered not only press freedom but also the right to freedom of expression,” she said via email, adding that it is the right of all Cambodian citizens to be informed about critical events occurring nationally and abroad.

“It served as a stark reminder that in Cambodia, journalists and outlets that dare to report on sensitive issues are walking on thin ice,” Sopheap said.

“For years, the government’s sustained assaults on free speech have created a pervasive culture of self-censorship and fear among journalists, both online and offline, eroding the right to freedom of expression from within,” she said.

“VOD’s reopening can be seen as a positive development, an example of resilience in the face of a hostile operating environment at home,” Sopheap said.

“I strongly denounce the fact that the government seemingly chose to ignore these provisions when it decided to effectively shut down VOD,” she said. She pointed out article 10 of the 1995 Law on the Press, which establishes how false allegations targeting public officials should be dealt with, and does not provide license revocation as a penalty.

Information Ministry spokesperson Tep Asnarith said the Information Ministry had no further comment related to the decision to shut down VOD radio.

Both Telecommunication and Post minister Chea Vandeth and his secretary of state So Visothy could not be reached for comment.

About Cambodian Journalists Alliance Association (CamboJA):

Cambodian Journalists Alliance Association (CamboJA) is the only independent network of professional journalists in Cambodia formed by journalists, including former reporters of the Cambodia Daily and Phnom Penh Post, which faced government repression in the lead up to 2018 general elections. CamboJA aims to establish a sustainable independent body that promotes access to information and press freedom, strengthens the professionalism of journalists, and supports their livelihoods.

*** END ***

Hacking and Intrusion in Narasi TV

By Abdul Manan, The Alliance of Independent Journalists (AJI) Indonesia

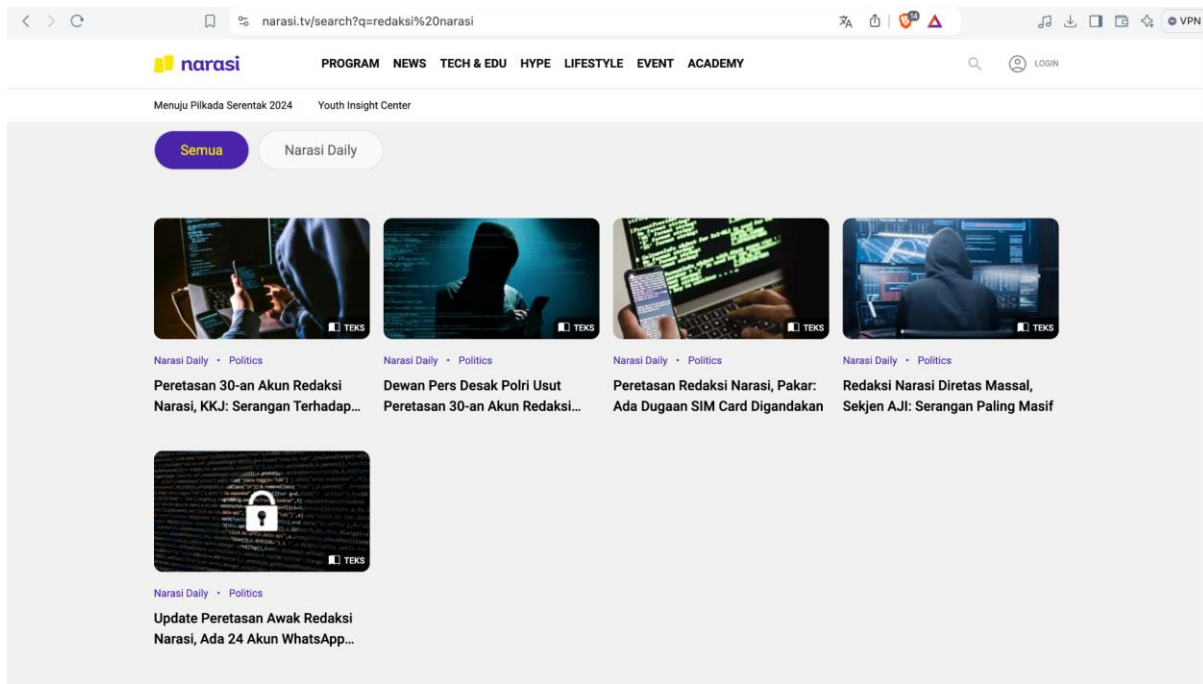
Digital attacks on journalists and media have become a common practice in Indonesia, at least since 2017. The forms of these attacks are diverse and continuously evolving. Some involve the exposure of personal data or threats against journalists on social media. Others take the form of distributed denial-of-service (DDoS) attacks, rendering news sites inaccessible due to overwhelming traffic exceeding their capacity.

According to data from the Alliance of Independent Journalists (AJI) Indonesia, digital attacks on journalists were first recorded in 2017, and have since increased, with various forms of attacks emerging. In 2022 alone, there were 61 recorded cases of violence against journalists, with digital attacks ranking second (15 cases) after physical violence (20 cases).

Among the numerous cases of digital attacks on journalists and media, one particularly interesting and distinct incident occurred on September 24, 2022, involving journalists and the crew of the news site Narasi TV. The attack occurred by taking over the conversations and social media accounts of one of its journalists, followed by similar attempts on the communication tools of 32 other individuals.

In addition to hacking, there was also a breach into Narasi TV's news site server. The hacker successfully infiltrated the system and displayed a message: stop or die. The site was eventually cleared of infiltrators. There are indications that these hackers, whose IP addresses were traced within the country, sent threatening messages to Narasi's crew, known for writing critical news about the government.

Although the exact cause of this attack is not yet known, Narasi and the Journalist Safety Committee (KKJ) believe that the hacking was triggered by news previously published by the media outlet. One particular news report strongly suspected of triggering the digital attack was related to the Indonesian intelligence organization, the State Intelligence Agency (BIN).



Picture 4: The Narasi TV website. (Source: narasi.tv)

The hacking was inadvertently identified by Jay Akbar, an editor at Narasi TV, on September 24, 2022. Initially, he received a WhatsApp message containing a One-time password (OTP) that he had never requested. Suspicious, he did not open the message. However, his WhatsApp account suddenly logged out, and he couldn't log back in using his Telkomsel number.

Shortly after, he received an email notification from WhatsApp stating that his number had been taken over by another device. After that, he lost control of his communication device. His WhatsApp account was restricted, allowing only calls. He reported the incident to his superiors at Narasi TV.

Apparently, Jay wasn't the only person who identified someone attempting to hack into his messaging application. Shortly after Akbar's report, several other employees claimed to have experienced the same issue. Laban Abraham, the news manager at Narasi TV, received complaints from other staff members about disruptions not only with their WhatsApp accounts but also their social media accounts such as Facebook, Telegram, and Instagram.

Within three days after Akbar had reported the hacking, at least 24 people from various divisions at Narasi had experienced hacking attempts. This included the editorial, finance, and human resources divisions. Some had received notifications that their accounts were being used on other devices, while others noticed attempts to access their devices. It was later revealed that a total of 33 people had experienced hacking attempts of their accounts.

It was not just the Narasi TV crew facing these digital attacks. During the same period, Narasi TV's technology team detected an intrusion into the digital media server. Once

again, the hackers, upon successful entry, sent a threatening message: "be silent or die."

After this attack, Narasi contacted the Alliance of Independent Journalists (AJI) and the Journalist Safety Committee (KKJ). AJI is a journalist organization established on August 7, 1994, while KKJ is a coalition organization of various journalist, media, and civil society organizations officially founded on April 5, 2019, in Jakarta.

According to Erick Tanjung, the Advocacy Chairman of AJI Indonesia and also the Coordinator of KKJ, assistance was provided in recovering hacked conversations and the social media accounts of journalists to minimize potential damage. The hacking of Narasi's server too, was quickly resolved.

From the initial investigation conducted by Narasi and KKJ, it was found that the attempts to take over accounts were carried out by changing passwords for conversation accounts and social media accounts such as Twitter and Instagram. This password change could be done by resetting the password. However, the victims never received OTPs (One-time passwords) from the operators as usual.

Hence, it was suspected that the hacker intercepted the OTP usually sent via text message to mobile phone owners. When the account owners didn't receive the OTP but the password change was still executed, suspicions arose that the mobile operators might be involved in this attack.

Narasi has sought answers from mobile operators regarding this matter. However, the responses did not meet expectations. Erick Tanjung stated that Telkomsel had denied any breach or attempt to clone Akbar's mobile phone number, and instead argued that the account breach fell within WhatsApp's jurisdiction.

Narasi and KKJ are convinced that this digital attack is related to their journalistic work. Throughout September 2022, several news reports were widely circulated about a high-profile scandal involving the murder of Brigadier Nofriansyah Yosua Hutabarat by the former Head of the Police Professionalism and Security Division (Propam) Ferdy Sambo.

Hutabarat, commonly known as Brigadir J, was killed on July 8, 2022, at the official residence of the former police inspector-general in the National Police Complex, Duren Tiga, South Jakarta.

In earlier accounts, Brigadir J was reported to have died in a shootout with another aide of Ferdy Sambo. It later emerged that the shootout story was merely a cover up. In reality, Sambo, along with his wife Putri Candrawathi, Bripka Ricky Rizal, and Kuat Ma'ruf, had planned the Hutabarat's murder over the suspicion that he had allegedly sexually assaulted Sambo's wife.

The murder scandal that shook the Indonesian National Police received extensive media coverage, thus making it unlikely that it was the sole cause of the digital attack.

Other media reporting on the incident did not experience hacking attacks like Narasi TV. However, Narasi TV identified two news articles, one of which was related to Sambo's murder, that garnered much attention during that period.

The first was about the alleged involvement of the State Intelligence Agency (BIN) in the Lukas Enembe case, titled "BIN Denies Budi Gunawan's Involvement in Lukas Enembe's Suspect Status Determination at the KPK," dated September 24, 2022, published at 12:06 p.m.. The second article was about the alleged connection between the son of the Head of BIN and an online gambling boss, titled, "Tracing Robert Priantono Bonosusatya's Path: Once a Guarantor for Budi Gunawan's Son's IDR 57 Billion Loan."

The first Another news article released by Narasi TV on September 24, 2022, at 12:06, was titled "BIN Denies Budi Gunawan's Involvement in Lukas Enembe's Suspect Status Determination at the KPK." This report covered a statement made by Stefanus Roy Rening's statement, the lawyer for Papua Governor Lukas Enembe, alleging that his client had been targeted since 2017, when Budi Gunawan visited Papua with the Minister of Home Affairs Tito Karnavian to meet Lukas Enembe.

This indictment is associated with Budi Gunawan's visit alongside the Minister of Home Affairs Tito Karnavian to Papua for the purpose of meeting Lukas Enembe. According to Rening, dDuring the discussion, Budi had requested that Lukas nominate Paul Waterpauw as his deputy governor candidate for the 2019 governor election. He further questioned Budi Gunawan's capacity as BIN Head in interfering in Papuan politics. In its response, the The National Intelligence Agency's spokesperson refuted the accusations and characterized Lukas's apprehension by the Anti-Corruption Commission as a strictly lawful matter.

The second article, published on September 20, 2022, at 10:39 a.m., included information from Indonesia Police Watch (IPW), noting that Robert had provided the Private Jet T7-JAB used by Brigadier General Pol Hendra Kurniawan and several police personnel to visit Brigadir J's family in Jambi on July 11, 2022.

The Narasi TV report drew attention to Robert's connection to online gambling. It also highlighted Robert's role in facilitating a USD 5.9 million loan by the Pacific Blue International Limited company based in New Zealand to Muhammad Herviano Widyatma, the son of the Head of the State Intelligence Agency (BIN), Komjen Pol Budi Gunawan. The loan was issued in 2005 when Herviano was only 19 years old, and Robert had acted as the guarantor.

These two news articles, published four days apart, discussed different aspects but shared a commonality: a focus on the Head of the State Intelligence Agency, Budi Gunawan. Narasi TV and KKJ believe that these news articles are related to the attacks against Narasi TV.

Safeguarding Freedom of the Press

News of the digital attack was made public through a press conference organized by the Alliance of Independent Journalists (AJI) on September 26, 2022. Laban Abraham, Narasi TV's News Manager, explained the chronology of the hacking and intrusion at Narasi TV. Sasmito, AJI's General Chairman, urged law enforcement to investigate the case, calling it an attack on press freedom.

In line with the standard procedures for handling violence against journalists and media, including digital attacks, a police report was filed to initiate criminal proceedings.

The Journalist Safety Committee (KKJ) supported Narasi TV by assisting not only with account recovery but also support during the criminal investigation related to the hacking. In the end, the decision to proceed legally was left to Akbar, the first victim of the hacking. After discussions with his family, the decision to pursue criminal proceedings was postponed.

Meanwhile, Narasi TV proceeded to take legal action on the basis of the server intrusion. Discussions between Narasi TV's legal team and KKJ, represented by the Legal Aid Institute for the Press (LBH Pers), led to Narasi TV officially reporting the intrusion to the Criminal Investigation Agency of the Indonesian National Police on September 30, 2022.

In the report, LBH Pers alleged that the hacker(s) violated Article 30 and/or Article 32 of Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE). These articles prohibit "accessing computers and/or electronic systems owned by others in any way" and "altering, adding, subtracting, transmitting, damaging, removing, transferring, hiding electronic information and/or electronic documents owned by others or the public."

Another charge leveled against the perpetrator was violation of Article 18 Paragraph 1 of Law No. 40 of 1999 concerning the Press. This article imposes criminal penalties on anyone obstructing or hindering journalists in carrying out their profession. The maximum penalty for violating this article is two years imprisonment or a fine of up to IDR 500 million.

Ade Wahyudin, Chairman of LBH Pers and Akbar's legal representative, stated that several pieces of evidence supporting the report had been submitted to the investigating team. Among them were proof of the website hacking, including the threatening messages.

In addition to filing a police report, there were other advocacy efforts by KKJ and the press community. Shortly after filing the report, members of the Press Council and KKJ met with officials at the Criminal Investigation Agency of the Indonesian National Police. During the meeting, the press community urged officials to take legal action in relation to the hacking case.

According to Erick Tanjung, officials from the Indonesian National Police explained the police's follow-up after the report from Narasi TV. The police sought Interpol's assistance to trace the IP addresses of the perpetrators identified from various countries, such as the United States and Europe. However, it was acknowledged that the perpetrators could be from Indonesia but using VPNs.

Jay Akbar then decided to pursue a civil case on the hacking of his conversation account. Represented by Haris Azhar Law Office, he filed a lawsuit against Telkomsel at the South Jakarta District Court on February 10, 2023. Fandi Danisatria, one of his lawyers, stated that as a consumer, Akbar should have full control over the various services provided.

Fandi mentioned that Akbar was logged out of his WhatsApp account and couldn't log back in with his Telkomsel number. It was suspected that someone else had control over Akbar's number, or had been granted access to the number. Through this lawsuit, Akbar sought to find out more about this matter.

Al Ayyubi Harahap, another lawyer for Akbar, said that the lawsuit was filed after mediation efforts with Telkomsel to seek clarification about the hacking yielded no results. Instead of providing an explanation, Telkomsel shifted the responsibility to WhatsApp. He considered this move an attempt by Telkomsel to wash their hands of the problem and a failure to provide a sense of security for their consumers.

In the press release, Akbar stated that the civil lawsuit aimed to send a message to the perpetrators that they should not have impunity when engaging in unlawful actions like hacking. He referred to several cases of hacked accounts experienced by journalists and human rights activists whose legal cases were not resolved by law enforcement.

As of December 2023, the civil lawsuit is still ongoing in the South Jakarta District Court. Laban Abraham is not overly optimistic about the outcome. During the hearing scheduled for expert witness examinations, not a single telecommunications expert agreed to testify for Jay in court, citing busy schedules. Nyonyo, as Laban is affectionately known, suspects that these experts are afraid of Telkomsel, which is a major telecommunications provider.

The progress of the criminal report by Narasi TV is also not encouraging and might face a fate similar to cases experienced by other media platforms. Tempo.co's website was hacked on August 21, 2020. Initially, the news site was inaccessible at midnight with a white screen displaying "403 forbidden." Half an hour later, the site's appearance changed to black, accompanied by the song "Gugur Bunga" playing for 15 minutes.

Apart from Tempo, Tirto.id also faced similar issues on August 21, 2020. While Tempo's hacking altered the visual appearance of the website, the perpetrators at Tirto changed and deleted at least seven articles. Despite the different forms of hacking,

the end result of both cases was the same. Both reported the incidents to the police, but no further action was taken.

According to Laban Abraham, the police have interrogated Narasi TV's team, from the information technology department to its personnel in the legal team. All evidence has been provided to the police. LBH Pers, Narasi TV's legal representative, inquired about the progress of the investigation at least twice, but as of December 2023, there has been no response from the Indonesian National Police. The legal process for this case seems to have hit a dead end.

The case of digital attacks experienced by the Narasi crew, and the unclear handling of the case, represents a general portrait of cases of violence against journalists in this country with a population of 270 million. Apart from the large number of cases – an average of 60 cases per year over the past 10 years – most of the perpetrators are not prosecuted. This factor is considered by AJI to contribute to this country's low press freedom ranking globally. In 2023, Indonesia ranked 108th out of 180 countries in RSF's World Press Freedom Index.

*** END ***

Journalist Harassed at Graha Samudra

By Abdul Manan, The Alliance of Independent Journalists (AJI) Indonesia

Journalism is considered a high-risk profession in Indonesia. Despite the legal protection provided by Law Number 40 of 1999 on the Press, incidents of violence continue. Based on data provided by the Alliance of Independent Journalists (AJI) Indonesia, the annual average number of incidents of violence against journalists in Indonesia over the last ten years stands at 66.

Various actions are categorized as forms of violence against journalists, ranging from obstacles for reporting, expulsion, physical assault to murder. Based on data collected by the Advocacy Division of AJI Indonesia, the highest types of violence experienced by Indonesian journalists in the past decade are physical violence.

One notable case that could set a precedent for the way such cases are dealt with in the future is the assault on Nurhadi, a journalist from Tempo Media in Surabaya, East Java. This violence occurred in 2021 when he was about to interview Angin Prayitno Aji, the former Director of the Directorate General of Taxation of the Ministry of Finance, who was a suspect in a tax bribe investigated by the Corruption Eradication Commission (KPK). The perpetrator of the violence was a police officer.

This is not the first case of violence committed by the police against journalists in the line of duty. In 2019, at least four journalists became victims of police violence while covering student protests against the revision of the Corruption Eradication Commission Law in September 2019. Criminal reports of these incidents were not followed up by the police, and the perpetrators were never prosecuted.

In contrast to previous cases, the police involved in the assault on Nurhadi were legally charged and sentenced to prison. The sentences for the two police officers were lower than what they should have received. According to the law, both can be punished with up to 2 years in prison. But the prosecutor asked for 18 months in prison, the judge gave him a sentence of 10 months in prison. But this case became a historic event where the police – as the perpetrators of violence who had typically acted with impunity – were finally brought to court and incarcerated.

Attacked in the line of duty



Picture 5: Solidarity Demonstration from Journalists to demand justice for Nurhadi (Source: AJI Surabaya)

The violence against Nurhadi occurred on March 27, 2021. Nurhadi had been assigned by his office, Tempo, in Jakarta, to interview Angin Prayitno Aji. On that day, Angin was marrying his daughter to the son of Kombes Ahmad Yadi, the former Head of the Planning Bureau of East Java Regional Police, at Graha Samudra Bumimoro Building, Surabaya.

Upon his arrival at the location, he was not permitted entry as only guests with a formal invitation were allowed inside. Nurhadi had intentionally dressed in the attire of a wedding attendee. Unable to gain access through the main entrance, he discovered an alternative entrance via an unguarded side door. After entering the building, he captured a photograph of Angin, who happened to be positioned at the altar during that moment.

Shortly after taking the photos, two individuals approached him and inquired if he had been invited to the event. During the interrogation, Nurhadi mentioned that he was a journalist. These two individuals, later identified as police officers, Briпка Purwanto and Brigadir Muhammad Firman Subkhi, physically assaulted him. Subsequently, Nurhadi was escorted out of the building.

The two police officers took Nurhadi to the Navy Military Police Post located near the wedding venue. After a brief stay there, Nurhadi was taken back to Graha Samudra. In a changing room, he was beaten, kicked, slapped, and his phone was confiscated. Firman demanded the phone's password, but Nurhadi refused. Firman and Purwanto continued to assault him with punches to his face and head.

Finally, the two police officers managed to unlock Nurhadi's phone and deleted the pictures taken at the event. At that moment, a person named Agung Budi Wibowo threatened him, stating, "Choose between the emergency room or a grave (death)." It was later revealed that Agung was Angin Prayitno Aji's stepbrother.

An unidentified individual serving as Angin Prayitno Aji's personal bodyguard, then physically assaulted Nurhadi and made explicit threats to end Nurhadi's life. The perpetrator covered Nurhadi's head in plastic and positioned a looped rope near his feet to create fear in him.

The attackers initially proposed monetary compensation to Nurhadi and his associate for the damaged SIM card and erased data on his mobile device. Both individuals declined the proposal. Thereafter, Nurhadi and his friend were returned to their place of residence.

Upon arriving home in Sidoarjo, East Java after midnight, Nurhadi immediately informed his editor in Jakarta and contacted AJI Surabaya, the organization to which he belonged. His editor at Tempo sought help from AJI Surabaya to accompany Nurhadi. According to Eben Haezer, the Chairman of AJI Surabaya, in the early hours, AJI Surabaya formed an advocacy team and created a WhatsApp Group for communication and coordination.

The next morning, AJI Surabaya coordinated with Legal Aid (LBH) Lentera and Kontras Surabaya, two organizations known for taking on cases of violence against journalists. They met at the Kontras Surabaya office. Nurhadi was also present. In that meeting, they compiled the chronological details of the case to be used as a basis for the police report.

AJI proposed two possible approaches in taking the case forward. First, litigation advocacy, involving legal defense. In cases of violence such as experienced by Nurhadi, the immediate step is to file a criminal complaint with the police to ensure the case proceeds to court.

The second approach is non-litigation advocacy, involving public campaigns to raise awareness about the violence. The goal is to generate public pressure so that law enforcement handles the case professionally. Non-litigation advocacy takes various forms, from press conferences to demonstrations.

After finalizing the case chronology, Nurhadi, accompanied by AJI Surabaya, LBH Lentera, and Kontras Surabaya, filed a complaint with the Criminal Investigation Directorate of the East Java Regional Police on Jl. Ahmad Yani Surabaya on March 28, 2022. In the official complaint, Nurhadi formally reported the violence committed by Bripka Purwanto and Brigadir Muhammad Firman Subkhi.

In the complaint, Nurhadi stated that the actions of the two police officers violated Article 18 paragraph (1) of Law No. 40 of 1999 on the Press, which prohibits hindering or obstructing journalists from carrying out their profession. The criminal penalty for

such an offense is a maximum of two years in prison and a maximum fine of IDR 500 million.

In addition to the Press Law, the two police officers were also expected to be charged under several other articles in the Indonesian Criminal Code (KUHP), including Article 170 paragraph (1) on Assault, Article 351 paragraph (1) on Persecution, and Article 335 paragraph (1) on Unpleasant Acts. The report only named the two police officers, as the identities of other perpetrators were unknown.

As part of the criminal reporting process, Nurhadi also underwent a medical examination at the Bhayangkara Police Hospital, located adjacent to the East Java Regional Police. During this examination, visible signs of assault, especially on his lips, were documented. Other injuries on his chest and face were mostly no longer visible.

Tempo released a public statement on the same day. Firstly, they urged the Chief of the East Java Regional Police, Irjen Nico Afinta, to accelerate the investigation of the perpetrators and ensure their prosecution. Furthermore, they urged the National Police Chief, General Listyo Sigit Prabowo, to direct his officers in the Professional and Security Division of the National Police Headquarters to handle the perpetrators in accordance with professional disciplinary measures.

In Nurhadi's case, there was a concern about potential further violence, so Tempo sought assistance from the Witness and Victim Protection Agency (LPSK), the National Commission on Human Rights (Komnas HAM), and the Press Council. Tempo asked these organizations to protect Nurhadi from additional threats and oversee the legal process of the case.

The police promptly responded to the complaints. Nurhadi was contacted by the Professionalism and Security Division of the East Java Regional Police, inquiring about his availability for a meeting with the two accused police officers. Nevertheless, Nurhadi declined to attend the unexpected invitation after consulting with KontraS Surabaya and LBH Lentera.

Consistent advocacy for accountability

Once the police began processing the case, AJI began its advocacy. On Tuesday, March 30, 2021, the Legal Aid Institute for the Press (LBH Pers) filed a letter reporting the alleged attack to the Professionalism and Security Division of the National Police Headquarters in Jakarta. Additionally, AJI dispatched letters to the National Police Chief, calling on them to conduct an investigation into the acts of violence. AJI provided counsel to the National Police Chief and held meetings with the Prosecutor's Office to ensure that the case was handled in a professional and proficient manner. Once the case was sent to the judiciary, AJI convened with the Judicial Commission to guarantee the judges' adherence to professional conduct.

According to Eben Haezer, solidarity for Nurhadi was significant. Many media outlets in Surabaya reported the case to the police. Solidarity actions also took place,

including a demonstration on September 29, 2021 in front of the East Java Governor's Office in Surabaya. On the same day, journalists in Sidoarjo also staged a similar protest.

The police's response to the case was relatively fast, likely due to extensive media coverage, the involvement of Tempo, and AJI's active role. Another factor believed to have contributed to the police's swift handling of the case was the declining public perception of the police, symbolized by the widespread use of the hashtag #PercumaLaporPolisi (reporting to the police is useless).

The #PercumaLaporPolisi hashtag emerged after a case of alleged rape involving three children was abruptly halted by the police in Luwu Timur, South Sulawesi. Project Multatuli, a public journalism site, covered the incident in October 2021 and brought the case to the public's attention. National Police Chief Listyo Sigit referred to the hashtag as an expression of public disappointment and called for police reform.

About a week after Nurhadi had filed report, the police questioned several witnesses, including Tempo's Editor-in-Chief and Eben Haezer, the Chairman of AJI Surabaya. After the questioning, the police conducted a case review at the East Java Regional Police's Criminal Investigation Division Building on Ahmad Yani Street, Surabaya, on April 19, 2021. Soon after, the police declared that the case had moved to the investigation stage.

Despite this progress, AJI called out the police's seemingly slow action, as there were no suspects named as a result of the investigation. Erick Tanjung, the Head of the Advocacy Division of AJI Indonesia, highlighted the police's sluggishness during the launch event of AJI's End Year Report on the situation of press freedom in Indonesia on May 3, 2021. The police eventually named the two accused officers as suspects on May 7, 2021.

After communicating with the prosecutor's office, the East Java Regional Police investigators sent an Investigation Progress Notification Letter (SP2HP) dated August 13, 2021 to the Prosecutor's Office. The case files were transferred from the prosecutor to the Surabaya District Court on September 3, 2021, six months after the police report. The first hearing of the case took place on September 22, 2021.

When the case entered the court, the Independent Journalists Alliance (AJI) held an audience with the Judicial Commission on November 1, 2021. AJI Chairman Sasmito hoped that the Judicial Commission would monitor the trial process. Prior to that, AJI had also met with the Attorney General's Office to ensure professional handling by the prosecutors.

AJI expressed other concerns related to this case, such as the perceived leniency toward the active-duty police defendants. Erick Tanjung, the Head of the Advocacy Division of AJI Indonesia, expressed concern regarding the Surabaya District Court's

omission to mandate the incarceration of the defendants. In the absence of incarceration, the two individuals could potentially endanger Nurhadi.

A small victory for press freedom

The legal proceedings in this matter did not unfold according to AJI's expectations. The police solely focused their investigation on the two officers and did not pursue any other individuals involved in the incident. Nevertheless, the most disappointing disclosure occurred when it was revealed that the two policemen were charged lightly, as the prosecutor solely invoked the Press Law and disregarded charges under provisions in the Criminal Code (KUHP).

During the indictment hearing on December 1, 2021, the prosecutor argued that Purwanto and Muhammad Firman Subkhi were proven to have violated Article 18 paragraph (1) of the Press Law, in conjunction with Article 55 paragraph (1) of the Criminal Code. This article addresses attempts to hinder journalists' work, and the prosecutor demanded a sentence of 1 year and 6 months in prison for each defendant. The prosecutor also ordered the detention of the two active-duty police officers.

The prosecutor further demanded that Purwanto and Firman pay restitution to Nurhadi, amounting to IDR 13,813,000, and to the key witness, Muhammad Fahmi, totaling IDR 42,650,000. However, the prosecutor set aside three additional charges: Article 170 paragraph (1) on Assault, in conjunction with Article 55 paragraph (1) of the Criminal Code; Article 351 paragraph (1) on Persecution, in conjunction with Article 55 paragraph (1) and the third, Article 335 paragraph (1) on Unpleasant Acts, read in conjunction with Article 55 paragraph (1) of the Criminal Code.

During the sentencing hearing on January 12, 2022, the Surabaya District Court found the two police officers guilty of violating Article 18 of the Press Law. However, the judge imposed a lower sentence than the prosecutor's demand, sentencing them to 10 months in prison. The judge agreed with the prosecutor's request for restitution.

During the sentencing hearing, representatives from the Press Council and various journalists and media organizations were present in the courtroom. Organizations included AJI, the Indonesian Television Journalists Association (IJTI), the Indonesian Journalists Association (PWI), the Indonesian Association of Cyber Media (AMSI), the Indonesian Cyber Media Union (SMSI), the Indonesian Local Television Association (ATVLI), the Indonesian Private Television Association (ATVSI), and the Media and Creative Industry Workers Union for Democracy (SINDIKASI).

The prosecutor filed an appeal against the Surabaya District Court's decision. In the appeal ruling, the judges of the East Java High Court reduced their sentences to eight months in prison. Subsequently, Purwanto and Muhammad Firman Subkhi filed a cassation appeal against the East Java High Court's decision with the Supreme Court.

The Independent Journalists Alliance (AJI) Indonesia and AJI Jakarta advocated at this stage by staging a protest in front of the Supreme Court office in Central Jakarta

on August 25, 2022. AJI demanded that the Supreme Court impose a heavier sentence. However, during the hearing on November 16, the Supreme Court affirmed the East Java High Court's decision, sentencing both officers to 8 months in prison.

After the Supreme Court's decision, the defendants' families paid the restitution as per the judge's decision to Nurhadi and his friend, Fahmi, at the Tanjung Perak Prosecutor's Office in Surabaya on October 4, 2023. Nurhadi was accompanied by officials from the Witness and Victim Protection Agency (LPSK) and Eben Haezer, the Chairman of AJI Surabaya, representing the Alliance Against Violence to Journalists.

During the legal proceedings of this case, Nurhadi was under the protection of LPSK. However, he did not reside in a secure location. Instead, he lived in a place where he could still work but under LPSK supervision. LPSK's protection status ceased after the Supreme Court's cassation decision.

For Nurhadi, the sentences given to the perpetrators were still very lenient. Considering the violence he endured from the police, a more appropriate punishment would have been dismissal, or at the very least, demotion. The restitution he received only covered the damage to his camera. What brought him some relief was that the police perpetrators were finally sentenced, marking a "small victory" in the advocacy for press freedom.

Erick Tanjung mentioned that some perpetrators of violence against Nurhadi remain untouched by the law due to a lack of evidence. However, a significant achievement in this case is that the perpetrators can be penalized, and restitution had to be paid by the offenders. This sets a precedent for similar cases in the future.

Eben Heizer stated that, apart from several other perpetrators who remain untouched by legal consequences, there is cause for concern regarding the perception against individuals who were not arrested despite their case being presented in court. While this case produced a definitive legal result, the implementation of the decision was not executed promptly. "This case would set a positive precedent for holding police perpetrators of violence accountable and ensuring their conviction and condemnation," he remarked.

About the Alliance of Independent Journalists (AJI) Indonesia:

The Alliance of Independent Journalists (AJI) is a journalists association in Indonesia with around 1,800 members across the country who promote and advocate on issues of press freedom, journalist welfare and professionalism to fulfill the public needs of objective information. AJI was established in 1994 by journalist-activists to demand justice and protection after the repressive actions of the then-government against the mass media.

*** END ***

Case Analysis of Mkini Dotcom Sdn Bhd (Malaysiakini)

By Centre for Independent Journalism, Malaysia



Picture 6: Malaysia Kini's office (Source: Malaysiakini.com)

Malaysia has experienced unprecedented political turmoil since the *Perikatan Nasional* coalition took power in March 2020. Throughout the coalition's rule until January 2021, a higher number of journalists and news portals were investigated by the police and charged with criminal offences because of their reporting. In addition, media operations in Malaysia became more controlled and restricted than ever before.

It all began when Malaysiakini published an article entitled "*Musa Aman acquitted after prosecution applies to drop all charges*" on June 9, 2020 that covered the acquittal of the former Sabah Chief Minister Musa Aman of 46 corruption and money laundering charges.

On the same day, Malaysiakini also published the contents of a press release issued by the Office of the Chief Registrar announcing that all courts would be fully operational beginning July 1, 2020, in line with the announcement that the country was moving into the recovery phase of the COVID-19-related Movement Control Order (MCO). Malaysiakini republished the press release from Bernama as an article entitled "*CJ orders all courts to be fully operational from July 1*".

Thereafter, the following comments were made by third-party online subscribers on Malaysiakini's website:

(i) Ayah Punya kata:

The High Courts are already acquitting criminals without any trial. The country has gone to the dogs;

(ii) GrayDeer0609:

Kangaroo courts fully operational? Musa Aman 43 charges fully acquitted. Where is law and order in this country? Law of the Jungle? Better to defund the judiciary!

(iii) Legit:

This Judge is a shameless joker. The judges are out of control and the judicial system is completely broken. The crooks are being let out one by one in an expeditious manner and will running wild looting the country back again. This Chief Judge is talking about opening of the courts. Covid 19 slumber kah!

(iv) Semua Boleh – Bodoh pun Boleh:

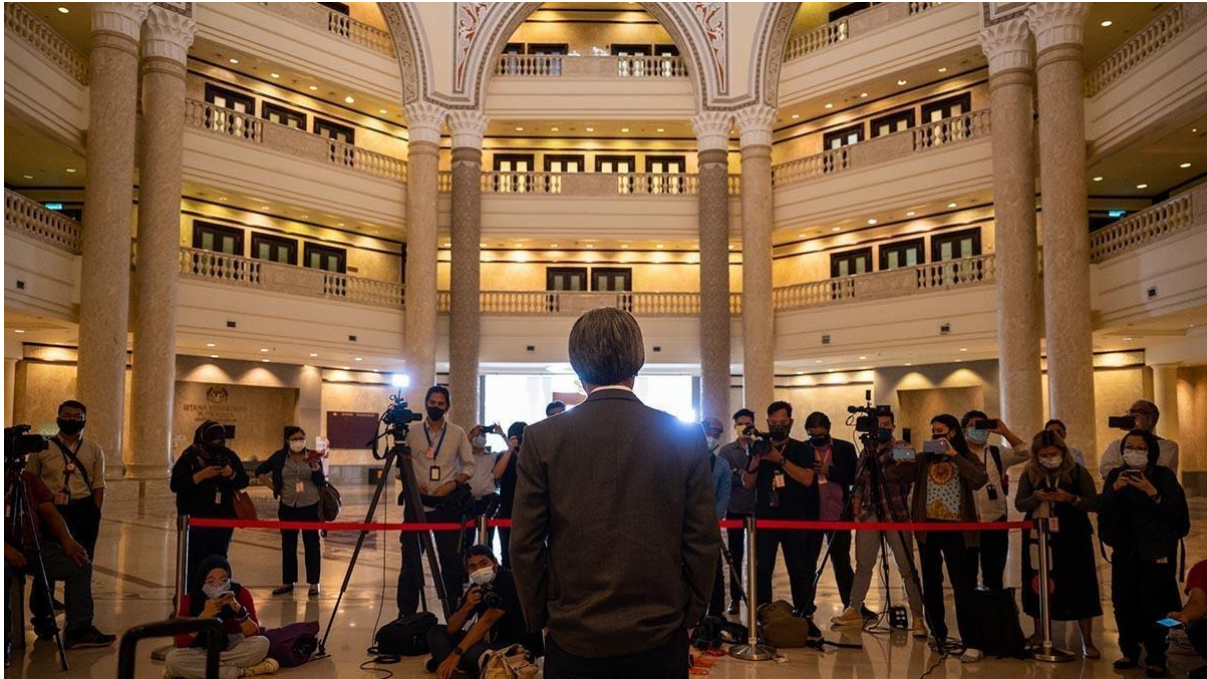
Hey Chief Justice Tengku Maimun Tuan Mat - Berapa JUTA sudah sapu - 46 kes corruption - satu kali Hapus!!! Tak Malu dan Tak Takut Allah Ke? Neraka Macam Mana? Tak Takut Jugak? Lagi – Bayar balik sedikit wang sapu – lepas jugak. APA JUSTICE ini??? Penipu Rakyat ke? Sama sama sapu wang Rakyat ke????; and

(v) Victim:

The Judiciary in Bolihland is a laughing stock.

Malaysiakini was first alerted by the police about five allegedly contemptuous comments left by their readers in the comments section of a news article on the Chief Judge's announcement to reopen the courts. This prompted Malaysiakini's editorial team to immediately review the comments, and within 12 minutes after being informed by the police of this investigation, the comments were removed.

Swift removal not with standing, the Attorney General initiated contempt of court proceedings against Malaysiakini and its editor-in-chief, Steven Gan, on June 15, 2020 on the basis that the comments "threaten[ed] public confidence in the judiciary and are aimed at tarnishing the administration of justice by the judiciary". According to the Attorney General, Malaysiakini had facilitated the publication of the five comments, which were "unwarranted" and "demeaning" attacks on the judiciary. The Attorney General's case centred around section 114A(1) of the Evidence Act 1950 which presumed Malaysiakini as the publisher of the comments and that the alleged act of contempt was thus committed by Malaysiakini unless proven otherwise.



Picture 7: Malaysian news site Malaysiakini's editor-in-chief Steven Gan speaks to members of the media at the Federal Court after his verdict of contempt of court proceeding in Putrajaya on February 19, 2021. (Source: icij.org)

According to section 114A of the Evidence Act 1950, anyone who is depicted as “the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication” is presumed to have published the content, and thus potentially held liable.

On February 19, 2021, the Federal Court found Malaysiakini guilty of criminal contempt of court for the five comments published by third parties on its website. This judgement has generated significant criticism from lawyers, civil society and media groups for restricting local press freedom and freedom of expression online.

This decision imposes an obligation on all online news portals to ensure that they moderate, and ultimately censor, comments before they are posted to avoid liability. This goes against even the internationally contested standard of ‘flag and take down’, while the better practice is to protect intermediaries until an authoritative source, such as a court, orders the news site to take the content down. To comply with this rule would require the mobilisation of extensive resources to manage the flow of third-party comments.



Picture 8: Malaysiakini pays RM500,000 contempt of court fine (Source: malaysiakini.com)

According to the court decision, Malaysiakini had also not taken all the necessary steps to filter the offensive comments before they were published, as its system only filtered foul language but not allegedly 'offensive' content. Malaysiakini was fined RM500,000 despite the Attorney General recommending an RM200,000 fine.

Analysis of Legal Issues in the Press Summary (Majority)

The key takeaways from the majority judgment in Malaysiakini's case are:

Online Platform Liability: The court ruled that online platforms bear responsibility for third-party comments, requiring them to prove their lack of knowledge. The insufficiency of Malaysiakini's safeguards underscored the shifting legal landscape surrounding the liability of online publishers.

Awareness of Contemptuous Comments: Despite Malaysiakini's experienced editorial team, the court determined that claiming ignorance of offensive comments was not reasonable. This decision emphasized the platform's duty to actively monitor and moderate user-generated content.

Harmonising Freedom of Expression: While acknowledging concerns about potential chilling effects on media freedom, the court affirmed the imperative to shield the judiciary from contemptuous attacks. This underscored the ongoing struggle to balance freedom of expression with the preservation of judicial integrity.

The judgment reinforces how Malaysia's contempt of court provisions are incompatible with human rights laws and standards, especially the right to freedom of expression online. Malaysia is not a party to the International Covenant on Civil and Political

Rights (ICCPR) which contains strict guarantees protecting this right. Indeed, the ICCPR has 171 State Parties, leaving Malaysia as one of just 22 UN Member States out of its ambit. However, freedom of expression is part of customary international law, incumbent on Malaysia.

The International Commission of Jurists (ICJ) has previously highlighted this incompatibility in its 2019 report on online freedom of expression in Southeast Asia. Malaysia's contempt of court offence is a common law doctrine and not codified statutorily, and a clear definition of criminal contempt of court has not emerged within case law. The ICJ has highlighted the need for reform to ensure clarity in definition, consistency in procedural limits and sentencing limits pertaining to criminal contempt cases, in line with the principles of legality, necessity and proportionality.

The chairperson of the Constitutional Law Committee of the Malaysian Bar has pointed out that section 114A is a "significant departure from the accepted notion where the prosecutor is required to prove all the central elements of an offence". This is exacerbated by how the Malaysiakini judgment sets an unreasonably high standard of proof to rebut the presumption under section 114A, as defendants will need to prove they lacked constructive, instead of actual knowledge.

The above concerns emphasise the urgent need for these laws to be repealed or substantially amended. In this regard, the Malaysian Bar has recommended that section 114A of the Evidence Act be repealed, and that the law of contempt be codified statutorily to provide clear and unequivocal definitions and guidance as to what constitutes contempt.

Post-Selective Case-Censorship Effect?

Gerakan Media Merdeka (GERAMM) a media advocacy group, believes that Malaysiakini as a responsible media outlet would have carried out its duty to the best of its ability and should not be pressured to exercise self-censorship to the extent that it will erode freedom of the press and expression.

The judgement created a de facto requirement for all online news portals in Malaysia to monitor and filter user-generated comments for potentially offensive content even before they are published to avoid legal liability. This imposes an onerous burden on providers that will disincentivise them to perform their roles as providing a platform for the free flow of information and ideas, as they will have to engage in constant proactive monitoring or filtering content.

The judgment also raised questions about who else is considered a publisher and liable for third-party content. Are social media platforms like Facebook and Twitter liable for all content posted by their users? What about social media users and bloggers for comments made by other people on their content?

The lack of clarity demonstrates how vague, broad and overreaching these legal provisions are, such that people cannot know in advance how to regulate their conduct

to conform with the law and avoid criminal liability. The judgment has significant implications for media freedom and freedom of expression.

Recommendations: Strengthening Media Freedom in Malaysia

The Malaysiakini case serves as a stark reminder of the fragility of press freedom in Malaysia. However, by drawing upon UNESCO's expertise and considering the potential of an independent media council, a roadmap for a more vibrant and resilient media landscape can be built by implementing the following recommendations:

- **Legal and Policy Reforms:** Revise laws that unduly restrict freedom of expression online like the Evidence Act and Sedition Act to align with international human rights standards and ensure clear definitions of offences without undue restrictions on legitimate expression.
- **Accountability for Threats:** Strengthen law enforcement efforts to investigate and prosecute violence, harassment, and intimidation against journalists.
- **Civic Engagement:** Foster public awareness about the importance of media freedom and empower citizens to actively participate in holding media accountable while holding the government accountable for upholding press freedom.
- **Establish the Malaysian Media Council** to be harmonise ethical reporting standards and provide the following:
 - **Complaints and Mediation:** Providing a platform for public, government, journalists, citizens, and media outlets to address grievances related to ethical breaches, press freedom violations, and inaccurate reporting.
 - **Professional Standards Development:** Collaborating with media stakeholders to establish and promote a code of ethics for journalists, upholding high standards of professionalism and accountability.
 - **Monitoring and Advocacy:** Keeping a close watch on threats to press freedom, documenting violations, and advocating for necessary legal and policy reforms.

CIJ has made this call on numerous occasions as it ensures the government does not remain the sole arbiter of the truth and prevents the censorship of the media. It provides a legitimate space for consultation and deliberation.

A free and independent press is fundamental to a healthy democracy, and the Malaysiakini case presents an opportunity for Malaysia to demonstrate its commitment to upholding these values. By embracing international best practices and implementing comprehensive solutions, Malaysia can not only address the specific challenges highlighted in the case but also establish a robust media environment that thrives on diverse viewpoints, critical inquiry, and open dialogue.

Conclusion

The contempt of court case against Malaysiakini and its Editor-in-Chief, Steven Gan, raises critical issues concerning freedom of expression, media freedom, and legal accountability in Malaysia. The court's decision, finding Malaysiakini guilty but acquitting Steven Gan, underscores the complex landscape of online publisher liability and the challenges faced by media organisations in balancing their role as information facilitators with legal responsibilities.

The court's reliance on section 114A of the Evidence Act to presume Malaysiakini as the publisher of third-party comments set a precedent that may have far-reaching implications for online news portals. The decision placed a substantial burden on platforms to proactively monitor and filter user-generated content, potentially stifling the free flow of information and hindering open discourse.

The case highlighted the need for legal reforms, specifically revisiting laws like the Evidence Act and Sedition Act, to align them with international human rights standards. Clear definitions of offences and safeguards against undue restrictions on legitimate expression are crucial to fostering a media landscape that upholds freedom of the press.

The establishment of a Malaysian Media Council has been proposed as a potential solution to address ethical breaches, press freedom violations, and inaccurate reporting. The council could serve as a self-regulatory body, providing a platform for mediation, developing professional standards, and advocating for the rights of journalists.

Furthermore, the urgency to expedite the formation of the Malaysian Media Council is emphasised, ensuring that it operates transparently and independently. The council, devoid of government representation in its decision-making body, could play a pivotal role in upholding the principles of media freedom and ensuring accountability within the industry.

About Centre for Independent Journalism (CIJ):

The Centre for Independent Journalism (CIJ) is a Malaysian non-profit organization that aspires for a society that is democratic, just and free where all peoples will enjoy free media and the freedom to express, seek, and impart information. CIJ was founded by a group of five journalists, writers and activists, and started a project to fill in the demand for critical analysis of the political issues confronting the public in response to the 1998 political crisis in Malaysia

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The Myanmar Junta's Brutal Message to Media

By Penrose Thitsa, Representative of Mizzima

In Myanmar, independent journalism has been brutally snuffed out since the military coup in 2021. The Southeast Asian country has skyrocketed to the dubious rank of the world's second-worst jailer of journalists after China, with 43 media persons imprisoned in 2023 alone, according to the Committee to Protect Journalists (CPJ). These numbers speak volumes about the Myanmar junta's brutal crackdown on the press and media freedom.

Drone of dissent: Filmmaker's life sentence



Picture 9: Shin Daewe, a prominent Myanmar journalist and documentary filmmaker. (Source: Shin Daewe/Facebook)

In the oppressive shadow of the junta, a camera becomes a weapon, and storytelling a crime. Shin Daewe, aged 51, a prominent Myanmar journalist and documentary filmmaker with a passion for social justice is currently silenced behind bars. Her husband, bearing the weight of their disrupted life, grapples with her absence while navigating the health effects of his stroke.

Shin Daewe is a pioneer in Myanmar's documentary scene. She encountered trouble on October 15, 2023, when junta soldiers arrested her at the Aung Mingalar bus terminal in Yangon. They discovered a drone in her luggage, which led to her arrest. Subsequently, on January 10, 2024, she received a life sentence at Yangon's Insein Prison under the Counterterrorism Law. The military junta's claim that she provided funding and assistance to terrorists remains unproven. The junta has a history of using the "terrorism" label against perceived opponents, including media persons, dissidents and activists, raising concerns about the fairness and legitimacy of such charges.

Shin Daewe's case exemplifies junta's assault on media freedom

Manny Maung, a Myanmar researcher at Human Rights Watch (HRW), told Mizzima News that Shin Daewe's case served as a deliberate attempt to intimidate those in the media industry and represents a direct assault on press freedom.

"Shin Daewe's case is clearly meant to send a chilling effect on others working in the media industry and is a blatant attack on media freedom. Our concern is primarily for Shin Daewe's well-being in detention; we understand that she has been mistreated by security forces while in custody," said Manny Maung.

"The harsh conviction and sentencing are just more examples of the junta's relentless persecution of the media. The charges are clearly trumped up and exaggerated. The fact that Shin Daewe was tried by a closed court is in clear violation of basic international due process standards," added the HRW researcher.

Myanmar documentary filmmaker Can Dal also pointed out that the challenges faced by journalists under successive military regimes underscore the perilous nature of their work, where the pursuit of truth through media reporting is met with repression, imprisonment, and even targeted killings.

"Now, you can't hunt for news with a camera. Every military regime fears media persons, so they arrest media persons, imprison and torture them in various ways. The worst thing is that they have even killed media persons. During both the previous government and under the current military council, we faced oppression. The right to freely express and report events through the media has become increasingly difficult," she said.

In response to Shin Daewe's harsh sentence, Can Dal condemned the junta's actions.

"Sentencing Ma Shin Daewe to the maximum prison term for possessing a drone is essentially a threat by the military junta to news media and filmmakers. They specifically target filmmakers. It has become extremely challenging for local documentary filmmakers and journalists to gather news and pursue their artistic endeavors. Successive governments fear cameras more than weapons," she said. "Throughout her life, Ma Shin Daewe has been portraying the difficulties and hardships faced by people, such as access to food, education, transportation, and so on, to raise

public awareness and to make the successive governments aware of them, through art.”

She asserted that it was unjust for a documentary filmmaker to face the maximum prison term – a life sentence – merely for purchasing a drone.

“She is a person who works with a camera and expresses art related to social life. She is not armed and violent. It is unacceptable that a documentary filmmaker should be sentenced to the maximum prison term for purchasing a drone. Everyone knows that this should not happen.”

From NGO films to festival acclaim: The rise of filmmaker Shin Daewe

Shin Daewe was born in 1973, and started her film journey as an assistant producer at AV Media in Yangon. Transitioning to Yangon Film School (YFS) in 2006 marked a pivotal moment for her, where, according to the official website of the YFS, she engaged in diverse courses and contributed to numerous NGO-commissioned films for the school’s production arm.

Remarkable among her creations for the school’s production arm is the award-winning documentary "A Better Future," spotlighting child-centred teaching. Her extensive portfolio includes impactful films such as "An Uninvited Guest" on tuberculosis treatments and "Beyond the Tsunami," which focused on NGO efforts to rebuild lives after the 2004 tsunami. Moreover, her projects, including "The Robe," "On Holiday," and the compelling portrayal of Burmese painter Rahula in "An Untitled Life," have garnered acclaim at film festivals worldwide. "Now I am Thirteen," which captures the life of a young girl in Myanmar’s dry zone, and "Take Me Home", a film that explores internally displaced persons (IDP) camps in Kachin State, solidified her reputation as a skilled documentarian. The latter earned her the Best Documentary Award at the 2013 Wathann Film Festival, and the Silver Award at the Kota Kinabalu International Film Festival, Malaysia's longest running film festival.

She also contributed to the documentary Burma VJ, which was nominated for a European Film Award in 2009.

Shin Daewe has had noted success but her support for Myanmar’s earlier democracy movement in the 1980s and 1990s saw her jailed for one month in 1990, and for one year in 1991 for her involvement in demonstrations. With this latest incarceration, her support for just causes has come back to haunt her.

Insights into prison visits

Although her husband was granted permission to visit her in the notorious Insein Prison in Yangon, their time together was restricted. Nevertheless, they found solace in small comforts and engaged in discussions despite the constraints of the prison environment.

Myint Thu, one of Shin Daewe's family members, told Mizzima, "Her husband was allowed to visit her in prison, so we asked him about her condition. He had to go to the prison around 5:30 in the morning, but when he was allowed to meet her, it was almost 9 o'clock. (During her husband's prison visit), she was in a room covered with glass, as usual, with other people around, so it was noisy."

Shin Daewe assured her husband of her well-being and also mentioned practicing yoga with a fellow inmate who was a former yoga teacher, according to Myint Thu.

"Her husband could meet her for just a while and there were security guards by her side. This is their custom. The time allowed was only 15 minutes per visit, so there wasn't much time to say anything. They only discussed their health and arrangements for items she wanted during the next prison visit."

Political prisoners are allowed to receive only one or two visits per month.

Impacts on family members

Amidst Shin Daewe's imprisonment, her husband, who is in his fifties, recently suffered a stroke and faces additional health challenges. While he retains some independence in managing his issues, his well-being is compromised without her support.

Myint Thu told Mizzima, "Her husband had a stroke, and they are both already in their fifties. She took care of her husband's health before she was arrested. Now, in addition to his own health struggles, he is deeply affected by his wife's legal case. While he's not bedridden and can manage his own matters, his health is not ideal. In light of this, we are concerned since she is not available to offer support to her husband."

As a fellow filmmaker and artist, Shin Daewe's husband also experiences financial difficulties, intensifying the family's concerns.

"Another factor to think about is that he (Shin Daewe's husband) himself is a filmmaker and an artist, so, unlike business persons, he may be experiencing financial difficulties. So, he may have some issues to struggle with. Our family, along with other close friends and all those who love Shin Daewe, are providing care and support for him. However, when anyone faces such a situation, it is impossible to feel at ease," said Myint Thu.

"One of his disciples is taking care of him. However, going through this kind of situation, in terms of health – physical, and mental – he is facing stress."

Myint Thu expressed the family's need for caution and vigilance due to perceived monitoring.

"As is typical for those involved in politics, we are being cautious because we're certain the family is being monitored. This means that although they did not search our house again, we have to be careful not to make any missteps. When we talk about anything regarding efforts to her freedom, we need to exercise caution. This isn't unique to our

family; anyone in this situation must face it. According to the information we've received, some of the released political prisoners had to report to the police about their travels. Given this situation, as a family, we must be vigilant and practice restraint."

A talented filmmaker and compassionate humanitarian

According to her family and colleagues, Shin Daewe not only excels in her craft but also demonstrates a compassionate and altruistic nature. Her passion for literature and poetry during her university days reflects her artistic inclinations.

Myint Thu said, "She loves literature. She also wrote poetry while she was a university student."

"Another noteworthy aspect is her charitable mindset. She assisted her younger brothers, like us, as well as other sisters, with whatever she could. Additionally, if her juniors in the workplace showed an interest in filmmaking, she helped them. She provided warm clothing for those in need and offered rice to those who required it. She gave kitchenware to those in need."

Myint Thu emphasized Shin Daewe's ability to illuminate societal issues through her life experiences, contributing not only to the local documentary film industry and journalism but also to a broader understanding of Myanmar.

"As a female film director, she possessed numerous advantages. There were many things she could accomplish and showcase," said Myint Thu.

"She held the power to shed light by using the experiences she encountered in life. Her contributions could greatly benefit the film industry and even our country. If more of her films reach audiences, the global community would gain deeper insights into our country and society," said Myint Thu.

"For instance, a film about the artist Rahula introduced the life of a Burmese artist to the world. It pains us to see such a virtuous person imprisoned. At age 50, she possesses maturity and a wealth of life experiences. She could have accomplished so much with her extensive life experiences and professional skills, yet now it feels as if she has been unjustly halted in her tracks."

Fears for filmmaker's safety

Haunted by the harsh realities of Myanmar's prison system, Shin Daewe's brother Myint Thu expressed the family's fear for her well-being.

"Prison is not like home. Prisons in our country disregard human rights and often subject inmates to torture. With news about her being reported internationally and domestically, we worry about her safety in prison. These prisons violate human rights," he said.

“In a country where political prisoners lack full rights, our concern for her intensifies. We've witnessed many political prisoners in the past, and all who were released from prison suffer from poor health, diminished abilities, and limited exposure to the outside world. We are deeply worried.”

Denial to due process and a fair trial

In the context of Myanmar's legal landscape, Shin Daewe's family faces the reality of her imprisonment and the bleak prospects for her release.

According to Myint Thu, “In her case, there was no right to appeal because the military tribunal issued the verdict. At the time of the hearing, we were not officially informed. All we knew at that time was that she had been sentenced to life imprisonment. She was not allowed to hire a lawyer and not allowed to appeal.”

“On that day, people close to the prison informed us of her sentencing; we did not receive official notification (from the authorities). She received a life sentence, and we only learned about it from the community close to the prison. So the prospect of her being granted the opportunity to appeal seems distant,” he said.

Describing Shin Daewe's case as a grim example, human rights researcher Manny Maung outlined the near-impossibility of appealing her life sentence due to the junta's rigged legal system.

“Under Myanmar's amended legal processes since the coup, Shin Daewe has few legal options to pursue. Since she was tried in a closed military tribunal, the appeals process can only be approved by (junta chief) Min Aung Hlaing. She wouldn't have had any legal representation during the trial, let alone the opportunity to build a defense. If anything, her case was decided as soon as she was detained,” said Manny Maung.

Highlighting the systematic oppression by the junta, Manny Maung elaborated on the harsh sentencing patterns in summary trials and the wrongful detainment of journalists and media professionals.

“We've seen a pattern of harsh sentencing in summary trials that are dishing out the maximum penalties against people deemed to be critical of the military or junta. Among the 20,000 people rounded up since the coup, the military continues to wrongfully detain dozens of journalists and media professionals. In most cases, defendants don't have access to their lawyers, or lawyers assigned to the cases are not allowed to properly defend their clients,” she said.

“For example, lawyers have said they were not allowed to even see their clients until the day of the hearing, which was very often held in make-shift courtrooms inside prison facilities. These ‘special courts’ were designed to fast-track politically sensitive cases. As a result, cases that would have been heard before a regular criminal court are under the jurisdiction of these junta-controlled ‘special courts.’ Lawyers said that

they were frequently obstructed or prevented from carrying out their professional duties, denying defendants their rights to due process and a fair trial.”

Amidst the junta's crackdown on the legal system and media, Manny Maung emphasized the importance of a sustained public and international campaign for Shin Daewe's case, acknowledging the risks faced by supporters within Myanmar while urging action from those outside the country.

“A sustained public and international campaign for Shin Daewe could help her case. Of course, there are always risks for supporters inside Myanmar since they are in the coal-face of the junta's wrath. They risk detention and having charges thrown at them too if they publicly draw attention to the case. It's our responsibility outside (Myanmar) to raise the profile of cases such as Shin Daewe and advocate for their unconditional releases.”

Highlighting the dire situation in Myanmar, she cautioned against placing undue trust in the legal rulings of the junta.

“The legal system, media, and critics are all under extreme attack by the junta. We shouldn't put too much store in the junta's legal determination, especially when it has systematically imposed obstacles on every facet of Myanmar society,” she said.

Echoes of longing

Myint Thu, expressing the collective sentiments of Shin Daewe's family members, reflects on their deep sorrow and perplexity regarding her circumstances.

“As younger brothers, we feel sorrowful. Another point that weighs heavily on our minds is our constant questioning of why she has to endure such hardships. We fail to understand why she has to face such cruelty,” said Myint Thu.

“In situations like this, a person with few family members, particularly her husband and her, become separated from each other. It is profoundly saddening when she and her husband who care for each other's well-being are disrupted,” he said.

Myint Thu expressed the family's greatest desire for Shin Daewe to return home and reunite with the family.

“What we desire most is for our sister to return home – to reunite with the family. Then alongside her husband, she would resume her work, create films, and express herself freely through her work. This is our family's wish: that the couple reunites and spends the remainder of their lives peacefully pursuing their passions.”

“In everyone's mind, we just want her to return home.”

About Committee to Mizzima:

Mizzima, an independent media organization established in New Delhi, India, aims to provide high-quality news about Myanmar while contributing to freedom of expression and an inclusive and democratic Myanmar. Originally an exile-based organization, it relocated to Myanmar in 2011 and became the first local media entity in 2012. Despite being banned from operating inside Myanmar after the February 2021 coup, Mizzima remains the most accessed source of news for Myanmar media consumers, with a 26% monthly access rate. Mizzima is a founding member of Burma News International, a consortium of independent media houses in Myanmar, and a member of IFEX, a global network promoting freedom of expression. The Mizzima Foundation, established in 2015, contributes to social change and economic development while nurturing a broadly inclusive and prosperous Myanmar. Mizzima believes a free and vibrant Myanmar media sector is crucial for peace and unity.

*** END ***

Justice For Two Foreign Journalists Killed During Protest

By Teeranaï Charuvastra, Prachatai



Picture 10: Red Shirt protesters facing military vehicles on 10 April 2010 (Source: Prachatai)

April 10, 2010, was a night of bloodshed in Bangkok, and Japanese cameraman Muramoto Hiroyuki was in the thick of it.

Muramoto, who was working for Reuters, had spent the afternoon and evening filming the Thai military’s attempt to disperse thousands of anti-government protesters, known as Red shirts, whose encampment stretched along the historic Ratchadamnoen Avenue. The operation descended into chaos as night fell; protesters were shot with live ammunition, while some soldiers came under attack from assault rifles and grenades at the hands of mysterious gunmen.

The last time Muramoto was seen, according to witnesses who would later testify at a court inquest into his death, he was standing with his camera in the no man’s land between the lines of protesters and soldiers close to Democracy Monument. A shot rang out. Muramoto fell. He was dead.

Over a month later, when the military mounted yet another assault on the protesters – who had moved their camp to downtown Bangkok – a similar fate befell Italian freelance photojournalist Fabio Polenghi. He was shot dead, witnesses said, just as he was photographing a group of armed soldiers advancing toward the demonstrators.

By the time the protest was finally brought to an end on May 19, 2010, at least 90 people had been killed. Mostly demonstrators and unarmed civilians, Muramoto and Polenghi had been among them. Over a decade later, no one has yet to be held responsible for their deaths. All investigations and court cases related to the killings have ground to a halt, and hopes for any chance of justice remain dim.

“No one knows what to do,” said Sorawut Wongsaranon, a former researcher with PIC2010, a project that compiles a database of fatalities and subsequent legal actions associated with the 2010 crackdown.

Murder charges against government leaders behind the crackdown have been thrown out. Relatives of the victims have failed to find a court to launch their own legal action against the military.

And the current government, led by Prime Minister Srettha Thavisin – whose party is closely allied to the Redshirt demonstrators – doesn’t appear to have any enthusiasm to take up the quest for justice on behalf of those who perished, Sorawut said.

“We’re in a limbo,” he said. “We don’t know what the current government will do.”

Battlefield Bangkok

Founded by a group of academics and rights watchdogs in the aftermath of the crackdown, the PIC2010 – its name meaning the People's Information Center – served as the go-to point for information about the violence that gripped Thailand in the months of April and May 2010.



Picture 11: Protesters marching to the Democracy Monument after a memorial event on the 12th anniversary of the 10 April 2010 crackdown on Red Shirt protests. (Source: Prachatai)

The website's database documents in minute detail each of the fatalities, both military and civilian, with maps showing the locations of their deaths, their brief profiles, autopsy reports that have been released to the public, as well as information from any related court cases, legal actions, and trials.

Altogether, the database tells a diverse human story of so many lives that came to a tragic end in the violence of 2010: a tuk tuk driver, a sugarcane farmer, an office worker, an electrician, a painter, paramedics, soldiers, and foreign journalists far from their home like Muramoto and Polenghi.

The protest that weaved those fates together began in March 2010, when Redshirt demonstrators, many of them from the urban working class and farmers from rural Thailand, descended upon Bangkok to call on then-Prime Minister Abhisit Vejjajiva to step down and call a snap election.

The Oxford-educated Abhisit came to power nearly two years earlier through a political brokering backed by the military and pro-establishment parties – part of a back-and-forth political tug of war that had been polarizing Thailand for years. On the other side of the powerplay is Thaksin Shinawatra, a tycoon-turned-politician who led Thailand's elected government until he was ousted in a 2006 military coup amid allegations of corruption and disloyalty to the monarchy.

When their demand was rejected by Abhisit, the pro-Thaksin demonstrators pledged to stay put until he changed his mind. They camped out on Ratchadamnoen Avenue, close to Government House, before some protesters also spread out to occupy Ratchaprasong Intersection, in the heart of Bangkok's financial district, in a bid to put pressure on the administration.

After days of clashes and tensions, the Abhisit administration deployed soldiers on April 10, with the stated aim of clearing the protesters from their main encampment on Ratchadamnoen Avenue. The chaos and violence that followed forced the military to eventually suspend the operation, but by the next morning nearly 30 people were dead, including Muramoto.

The situation only worsened after the crackdown. The protesters shifted their base to Ratchaprasong Intersection, while a shadowy group of militants, which came to be known as the Blackshirts, staged sporadic deadly attacks on soldiers and counterprotesters.

Negotiations for an early election broke down. By mid-May, the government resolved to crush the protests through the use of overwhelming military action, and ordered the protest sites to be put under siege. Parts of central Bangkok turned into warzones as soldiers battled molotov-throwing protesters and the Blackshirt militants, sometimes killing demonstrators and bystanders in the crossfire.

The final push came on May 19, with soldiers and armored vehicles storming their way toward Ratchaprasong Intersection. In the face of hopeless odds, Redshirt leaders

surrendered themselves to the authorities and called off the protest – just shortly after Polenghi was killed.



Picture 12: Phayao Akhad (front) holding the blue Red Cross vest her daughter Kamonked was wearing when she was killed during the 19 May 2010 crackdown on Red Shirt protests. (Source: Prachatai)

All told, according to a count by PIC2010, a total of 91 people died in the crackdowns, and more than 2,000 were injured, in what is now regarded as the worst episode of political violence in Thailand's modern history.

A brief flicker of light

Abhisit's grip on power was proven to be short-lived. When elections rolled around in July 2011, it was Thaksin's own sister, Yingluck Shinawatra, who won by a landslide. Hopes for justice were rekindled as the pro-Thaksin Pheu Thai Party assumed power and pledged to bring those responsible for the 2010 crackdown to trial.

The government ordered the Department of Special Investigation, or DSI, to spearhead the effort. Charges of murder were filed against Abhisit and his deputy, Suthep Thaugsuban, in a court for political office holders. Court inquests were launched to establish whether security officers were responsible for the civilian deaths, including Muramoto and Polenghi.

The results were mixed. While some inquests did firmly establish army soldiers as the culprits in some cases – like those of the 6 deaths inside a temple close to

Ratchaprasong Intersection on the last day of the protest – it gave no concrete conclusion for either Muramoto or Polenghi.

An inquest for Muramoto said it was impossible to identify his killers, citing a lack of evidence. Traces of a bullet that could pinpoint the type of firearm used were not found on Muramoto's body, the court said, and the nearby presence of the Blackshirts meant their role in his death could not be ruled out.

Polenghi's case was somewhat clearer, but not very helpful: the court confirmed that Polenghi was killed by the ammunition consistent with the type used by the soldiers on May 19, and that the bullet was fired from the direction of the advancing troops, but it declined to lay the blame squarely on the military.

Activists and families of the victims were also disheartened to learn that all of the army generals involved in the crackdown were somehow spared from DSI's legal crusade; political analysts suspected a Faustian bargain between Pheu Thai and the all-powerful military in exchange for a coexistence in the hall of power.

Their fear was realized in November 2013 when the Pheu Thai Party attempted to pass a blanket amnesty bill that would expunge all criminal charges against all parties involved in the crackdown, including demonstrators, security officers, military generals, and government leaders. The same bill would also grant amnesty to Thaksin, who was found guilty of corruption by a court in 2008.

The backlash against the bill from both sides of the political divide were swift, and proved to be a death knell for the Pheu Thai government. Demonstrators opposing Thaksin flooded the streets, prompting pro-Thaksin protesters to do the same. Violence returned to Bangkok as the confrontation turned deadly. After months of upheaval, army chief Gen. Prayut Chan-o-cha seized power in a coup. He would rule Thailand for the next 9 years.

Memory hole

Under Prayut, all signs of progress in the legal campaign over the 2010 crackdown came to an end.

Protests and any action seen as a public challenge or rebuke to the military, including rallies marking the anniversary of the crackdown, were banned, with threats of lengthy jail time. The DSI lawsuit against Abhisit and Suthep floundered; the pair was acquitted in 2014, before the high courts confirmed their verdicts in 2016 and 2017.

Although the law technically still requires the DSI to follow up on the court inquests related to the 2010 crackdown and file charges against those responsible, the department has virtually given up any attempt to do so, Sorawut said.

Without anyone taking charge or bringing them to court, the investigations started by the DSI in 2011 have simply become “cold cases” in the department’s backlog, neglected and forgotten.

“The DSI has been sitting on dozens of these investigations for nearly 13 years now,” said Sorawut, who has since left the PIC2010 project and joined Prachatai news agency as a journalist several years ago.

Even when members of the public took matters into their own hands and bypassed the DSI’s inaction, their effort ended in a Kafkaesque loop of deniability. Sorawut pointed to a bid to lodge a legal action against the military court by Phayaw Akkahad, whose daughter Kamonkate Akkahad was shot dead along with five others inside a temple on the last day of the 2010 protest.

Witnesses and evidence presented to the court indicated that Phayaw’s daughter, known as “Nurse Kate,” was killed on May 19, 2010, while tending to the wounded inside Wat Pathum Wanaram, despite the site being designated as a “Safe Zone” by the government at the time. Five others, including paramedics, died with her under the hail of gunfire. A court inquest delivered in 2013 unequivocally blamed a group of soldiers in the area for the killings.

Armed with the inquest, Phayaw filed a lawsuit at the military court, a separate judicial entity run entirely by the military, hoping to have the soldiers responsible brought to justice. To her disappointment, the military judges declined to hear her case, claiming that it has no jurisdiction, Sorawut said.

But similar lawsuits in civilian courts were also declined on similar grounds, raising confusion over who actually has the authority to hear the cases.

“All legal channels have been exhausted at this point. No one would admit that it’s their jurisdiction. No one would answer the question about who has the jurisdiction, either. So we don’t know how the cases could possibly proceed,” Sorawut said.

“As of this moment, no one would take the case, whether they are civilian court, military court, or the court for political office holders,” he continued. “No one would accept it.”

The situation would be even more tricky for foreigners like Muramoto and Polenghi. Muramoto, a Japanese citizen, was represented by the Japanese Embassy in Bangkok during the court inquest sessions, but the embassy made no attempt at filing any further legal action after the inconclusive decision was handed down in 2015.

In Polenghi’s case, it was his sister Elisabetta who often flew to Thailand and followed up on the investigation into his death. During her visits, she regularly spoke to the media and campaigned for clarity over her brother’s death. In one such interview, Elisabetta said she had to sell her studio in Milan to pay for all the costs herself, and everyone else in her family had told her to “move on,” – something she refused to do.

But Elisabetta herself died in 2014, reportedly from cancer. The Polenghi family has not made any known contact with the Thai authorities since. According to a Pheu Thai MP who met with Elisabetta shortly before her death, she had left two instructions for anyone willing to listen: to pursue Fabio's case to the end, and to construct a memorial in honor of journalists who were killed and wounded during the political unrest of April-May 2010.

Both of her wishes remain unrealized.

'History can be revived'

As Thailand geared up for the May 2023 election, hopes for justice over the 2010 crackdown were again revived. Various pollsters expected a large turnout for the Pheu Thai Party and its progressive ally, the Move Forward Party, while Prayut and the pro-military parties were projected to be headed for a dismal performance.

When the results came in, the Move Forward Party placed first, followed by Pheu Thai, though the coalition would need support from the unelected Senators – nearly all of whom were handpicked by Prayut himself – to form a ruling government.

After the Senators refused to endorse the Move Forward Party's bid for premiership, with many declaring their opposition to the party's pledge to reform the monarchy, Pheu Thai broke away and joined hands with Prayut's erstwhile allies and the pro-establishment parties. The dramatic flip helped Pheu Thai secure enough seats for Srettha, a businessman with longtime ties to Thaksin, to be named as the Prime Minister.

With many of the same figures from Prayut's quasi-military government remaining in power alongside Pheu Thai, Sorawut said the development does not bode well for those wishing to see a serious revival of legal actions against those responsible for the 2010 crackdown, let alone the military.

"It caused anxiety over how any progress could possibly be made, now that they have shaken hands and reconciled their differences," Sorawut said.

Still, he remains hopeful that the situation may change for the better some day, given that the political climate is freer and the civic movements stronger than during the direct military rule by Prayut's junta.

"If you ask me whether we've hit a dead end, well, if you look at it with optimism, it's not exactly a dead end," Sorawut said.

"Finding closure to the 2010 crackdown is part of a transitional justice system. In order to achieve it, there must be a strong push from the political sector. If we look back at [the junta years], it was hopeless, but right now we have an elected government, so a compromise is possible."

The former researcher for PIC2010 said justice for Muramoto, Polenghi, and others who died in the crackdown will now hinge on the perseverance of civil society and rights advocates to keep making waves and pressuring the government to deliver closure for the lives lost in 2010.

“We’ve already seen the lessons from South Korea,” Sorawut said, referring to the 1980 Gwangju Uprising, which is now widely remembered and commemorated by South Koreans as a watershed moment for the country’s struggle for democracy. “History can be revived any day in the future. But will I live to see that day?”



Picture 13: Move Forward Party's supporters gathered for its final campaign stage before the May 2023 general election. (Source: Prachatai)

About Prachatai:

Founded in 2004 by a coalition of social activists, scholars, and media professionals, Prachatai (meaning "Freedom for the People" in Thai) is a nonprofit online news agency that provides timely, independent coverage about human rights issues, freedom of expression, and civic movements in Thailand. Prachatai joined the PFMSea initiative as its latest partner organization in May 2022.

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Freedom of the Press, Freedom of Expression and Future Threats in Timor-Leste

By Zevonia Vieira and Alberico Junior da Costa, The Association Journalist Timor Leste (AJTL)

Freedom of expression and freedom of the press are key elements of human rights and a cornerstone of democracy. Both freedom of expression and freedom of the press are enshrined in the Constitution of the Democratic Republic of Timor-Leste, Article 40 and 41 as a base for sustainable development, and are crucial to strengthening the country's young democracy, by preventing corruption and fostering good governance.

Articles 40 and 41 set out a guarantee of press freedom, journalist independence and the public's rights to credible information. The respect for privacy and the good name of others are also set out in the Constitution Articles 67, 68, 76, 77, 417, 418 and are also outlined in the country's Civil Code except when it is in the public's interest.

However, there also exist certain legal provisions that have been used to impede freedom of expression and freedom of the press in the country. Article 285 of Timor-Leste's Penal Code (on slanderous denunciations) has been a huge threat to the country's media and journalists. Government officials and the public have been known to use this provision to take journalists and the media to court.

The State of Timor-Leste has ratified a number of the International Conventions, which includes Article 19 of the International Convention on Civil and Political Rights (ICCPR) on freedom of the press, freedom of opinion without borders and interventions. Timor-Leste is a new democratic country in Southeast Asia, and is internationally recognized as per the 2022 and 2023 Democracy Index. Timor-Leste's press freedom is also highly rated; Reporters without Borders (RSF) places the country's press freedom at 10 out of 180 countries in its global ranking index, thus making 'the country's media among the freest in the region.'

Digital attacks a threat to press freedom in Timor-Leste

Digital platforms are increasingly being used globally as a space to organise campaigns, advocate, share experiences and transmit either positive or negative information, including hoaxes and fake news. In most cases, all of these can be accessed whenever and wherever through a digital platform.

Lack of digital literacy has been a huge challenge and has led to some social media users becoming victims of widespread disinformation campaigns launched by irresponsible parties on social media platforms. Online media journalists too, have not been spared.

According to We Are Social (2022), the internet penetration in Timor-Leste is at 45 per cent of the total population, with young people as its primary users. As internet penetration continues to grow, there remains a pressing need to better understand the

social media behaviors of young Timorese, as people under 35 years old constitute 74% of the population, and the median age in Timor-Leste is 20 years old.

Certain online media have also become targets of bullying and hate speech on social media due to their investigative reporting. An example of such a case are the attacks on Diligente Online, an online media portal comprising young Timorese journalists. The Portuguese language news portal was attacked on social media after it published its investigative report uncovering the mistreatment taking place within a seminary convent in the country's capital Dili.

The story generated strong reactions from former students of SENOFA, the minor seminary of Lady of Fatima, saying Diligente Online's news was fake and baseless. Some ex-students of SENOFA also threatened Diligente Online on the social media platform Facebook.



Picture 13: Timor Leste Journalists demonstrate fighting the defamation law. (Source: AJTL)

Harassment of online media and journalists

Rogério Pereira Cárceres, a journalist working for online media platform Hatutan.com, and the editor in-chief, Francisco Simões Belo da Costa were summoned by the Public Prosecution Office in the aftermath of a news story published on June 20, 2023 entitled 'Prosecutor-General Alfonso Lopes and his Advisor Óscar Tavares Spend State Budget for their Private Trip to Portugal.'

The duo was summoned to respond to Prosecutor-General Alfonso Lopes's claims that Hatutan.com's news story was an act of defamation. The summons came after

Hatutan.com offered Prosecutor-General Alfonso Lopes the right to respond in compliance with Article 34 of the Press Law which gives a person the right to respond and the right to corrections.

Similarly, Neon Metin (www.neonmetin.info) also became a target for threats and intimidation on social media after it published a video of an interview with an underage victim of sexual abuse. The video highlighted abuse that had allegedly been committed by Richard Dashbach, an American priest at Topo Honis Orphanage for more than 20 years. After the video was published, the followers and supporters of the priest launched attacks against the journalists of Neon Metin by phone and on social media urging Neon Metin to delete the video on the basis that it was fake. Some of Mr. Dashbach's supporters also urged the police to arrest the journalists responsible.

These repeated patterns of attack have contributed to an environment that has made journalists in the country feel unsafe, and threatened freedom of the press in Timor-Leste.

Such attacks and intimidation are not limited to only online media journalists. Broadcast and print journalists were also summoned by the Scientific Police for Criminal Investigation (PCIC) in cases where journalists are said to have breached the so-called principle of justice secret, which is stipulated in Article 70 of Criminal Procedural Law.

According to the PCIC, journalists were summoned because they publicised a criminal case that was still in the process of investigation and a media ban had been issued by the police.

Public Defender Sergio Paulo Quintas however, during AJTL's editor club discussion in September 2023 said that PCIC investigators and prosecutors had misinterpreted the referred article. According to him, justice secret legally binds those who are directly part of the investigation process. As such, journalists are excluded from the so-called justice secret, adding that if the media or journalists launched an investigation into the case, article 70 does not apply to them because they are not part of the investigation.

Jornal Independent is a daily-based newspaper that is known for its investigative journalism. Its editor-in-chief, Jorginho dos Santos and journalist Domingos Gomes were summoned by the National Criminal Investigation Police (SIKN) and PCIC for an inquiry into the newspaper's story published on October 1, 2022 regarding the alleged sacking of Gastão Pereira, director of Internal Intelligence at the National Intelligence agency.

It is not uncommon for journalists and media outlets to be called in for inquiry by the police, in particular if it involves news coverage of corruption involving government officials. Such intimidation serves to restrict and threaten freedom of the press, and its role in promoting the citizens right to information.

Journalists working for Timor Leste's public broadcasting service, Radio and Television of Timor Leste (RTTL) were also intimidated in the course of reporting at the Dili District Court. On February 16, 2023, the wife of a defendant, Zenilda Gusmão,

threatened RTTL reporters trying to cover the trial by attempting to smash the reporter's camera.

Democracy, freedom of the press and freedom of expression

Freedom of the press and freedom of expression is a cornerstone of democracy that was fought for during Indonesia's illegal occupation of Timor Leste and throughout Soeharto's New Order regime and the independence era.

To this end, human right activists, journalists and Association Journalist Timor Leste (AJTL) continue advocating on the importance of freedom of the press and freedom of expression. During its first congress in 2002, AJTL proposed that Timor Leste's Constituent Assembly include freedom of the press and freedom of expression in the Constitution of the Democratic Republic Timor-Leste. AJTL's proposal was accepted and the content of AJTL's proposal evolved into article 40 and 41 of the Constitution. Significantly, it meant that all Timorese have the right to access information and are free to speak their minds.

Other safeguards to freedom of expression and a free press also exist, including article 34, which provides all citizens with the right to respond and the right to correction if a news article is considered unbalanced or incorrect. The Press Council also acts as a mechanism to facilitate the peaceful resolution of disputes involving journalists.

Nevertheless certain laws, such as article 285, which covers "slandorous denunciation," continue to be misused against journalists and embroil them in legal proceedings. Such provisions attempt to stymy journalists from pursuing stories that delve into issues such as corruption or abuse of power, thus threatening freedom of expression and Timor Leste's free press.

In recent years, the government has attempted to introduce other legislation that may negatively impact freedom of expression in Timor Leste. Given the prominence of the digital space as a site for widespread disinformation, hate speech and other forms of cybercrime, lawmakers have introduced a draft Cybercrime Law in January 2021. Despite its purported intent, both journalists and AJTL have voiced concerns over the draft law's potential in curtailing freedom of expression and impeding the capacity of media, journalists and civil society organizations in their role as watchdogs.

In 2020, lawmakers also attempted to introduce a draft Criminal Defamation Law that would have made defaming representatives of the state or Catholic Church punishable by up to three years in prison.

Advocacy and campaigns

AJTL has conducted a number of campaigns, workshops and discussions, on freedom of the press and freedom of expression in a democratic society. In each of these activities, state institutions, namely the police force, government officials and prosecutors were invited to participate to increase awareness on the role of media and

journalists in promoting good governance, accountability and human rights in a young democratic country.

In addition, AJTL provides support to journalists and media in Timor Leste in its advocacy for the protection of a free press and freedom of expression.

Hatutan Online's case

The Public Prosecution Office had summoned Hatutan.com's Editor in-Chief, Francisco Belos Simoes da Costa in relation to an article published by the media outlet. The news story was considered to have defamed Prosecutor-General Alfonso Lopes' good names and image.

Upon being notified of this summon, AJTL approached Mr. Lopes to withdraw his summon, on the basis that Hatutan.com did not breach any laws or code of ethics and the article was based on facts.

In a press conference, AJTL strongly condemned the actions of the Public Prosecution Office, highlighting that such measures were aimed at intimidating journalists investigating stories involving public figures. Any story produced is a journalistic product, and not a criminal act. AJTL further called on the Public Prosecution Office to withdraw the summons, highlighting article 34 and existing mechanisms such as the Press Council as a means to resolve the dispute.

AJTL drew the public's attention to the case by speaking about it on public platforms, including a TV talk show. These efforts were coupled with meetings with the Public Prosecution Office and the Prosecutor-General.

As a result of its advocacy, AJTL was successful in getting all charges dropped. Several days after its meeting with the Public Prosecution Office, a letter was sent by the Office to the Press Council, saying it had withdrawn all legal charges in relation to the case. AJTL was also successful in persuading Prosecutor-General Alfonso Lopes in proceeding with any criminal charges against the journalists.

AJTL's advocacy strategy in promoting and defending freedom of the press and freedom of expression has been premised on working hand-in-hand with the state. Such collaboration has led Timor Leste to being recognised as one of the leading countries globally and in Southeast Asia with a free press. A primary contributing factor has been the absence of journalists imprisoned because of their reporting, and the lack of laws that criminalise or impede the work of journalists.

However, the actions of the Public Prosecution Office, PNSIK and PCIC in issuing summons may have potential negative ramifications on press freedom. There is rising concern that should such actions continue, journalists may feel the need to self-censor in their reporting, particularly in cases involving government officials and politicians. In turn, this may lead to a downgrading of the country's ranking in the press freedom index.

Despite these challenges, AJTL is committed to continue its advocacy efforts and campaigns, dialogues, workshops, and editors club discussion, with a wide array of

stakeholders, including journalists, civil society organisation, security forces, legal practitioners, and academics, among others, to promote the importance of press freedom and freedom of expression in Timor-Leste.

About The Association Journalist Timor Leste (AJTL):

Association Journalist Timor Leste (AJTL) is a journalist association which was founded in 1999 consisting of professional journalists and citizen journalists that succeeded in pushing the issuance of a Press Law and a Press Council to protect an independent press in Timor Leste.

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Maguindanao Massacre, Fourteen Years of Injustice

By Alyssa Mae Clarin, the National Union of Journalists of the Philippines (NUJP)

On November 23, 2009, fifty-eight lives – including thirty-two journalists, perished in what was considered as the single most deadliest attack on independent media and the worst incident of electoral violence in the world.

No one had anticipated that a simple coverage of a local candidacy filing would turn into a long-standing case that would remain unresolved, even after fourteen years.

The massacre

On the morning of November 23, 2009 wife and sisters of then Buluan Vice Mayor Esmael “Toto” Mangudadatu were on their way to Shariff Aguak, the previous capital of Maguindanao Province, to file his certificate of candidacy (COC) for the next gubernatorial elections.

Mangudadatu had decided to challenge the reigning political dynasty in Maguindanao, the Ampatuans, who had remained in power in the province ever since.

The Ampatuan clan became one of Mindanao’s most prominent political dynasties after the People Power Revolution in 1986, when then president Corazon Aquino had appointed patriarch Andal Ampatuan Sr. as the Chief-of-Office of Maganoy, present-day Shariff Aguak.

Mangudadatu had decided to stay at home for his own safety since his candidacy had earned him a lot of death threats aiming to dissuade him from the gubernatorial race.

In his place he had sent his pregnant wife, Genalyn Mangudadatu, along with other female relatives for his COC filing, believing that as women, they would remain unharmed as per the Islamic traditions.

As an added precaution, Mangudadatu had also invited multiple journalists and other media workers to cover the filing of the candidacy, hoping that the presence of journalists would deter an attack.

Mangudadatu had arranged for journalists from South Cotabato and General Santos to join the all-women convoy and cover the filing.

At around 7:00 a.m. in the morning, journalists gathered at the Mangudadatu residence in Buluan, Maguindanao. The convoy planned to depart for Shariff Aguak at 9:00 a.m. but was delayed because of security concerns. The family had allegedly sought the help of police and military, but was turned down.

Eventually, the group was assured by the local police that the road to Shariff Aguak was safe and that police had been deployed along the road for checkpoints.

At 9:00 a.m., the convoy of seven vehicles carrying journalists, lawyers, and the female relatives of Mangudadatu were on their way from Buluan to the local Commissions on Elections (COMELEC) office.

En route to Shariff Aguak, a car containing three journalists opted to break away from the convoy and go back to the hotel where they found out from the hotel personnel that two men riding a motorcycle had asked for the names of the journalists who are part of the convoy.

Before reaching its destination, the convoy was stopped by at least 10 armed men who had ordered the convoy of vehicles to drive onto a rough dirt road to the west, to a hilly and sparsely populated part of Sitio Malating, Brgy. Salman, Ampatuan town.

At the location three mass graves had already been prepared for the victims.

Mohammad Sangki Testimony

According to the testimony of Mohammad Sangki, one of the people involved in the planning and execution of the massacre, the armed men – led by Datu Andal “Datu Unsay” Ampatuan Jr. – had ordered all convoy passengers to lie on the ground while the remaining armed men trained their firearms on them.

Sangki said he had overheard the conversation between Ampatuan Jr. and his father, Datu Andal Sr. where Ampatuan Jr. had told his father that the convoy and its passengers had already arrived, to which the older Ampatuan replied: “You already know what to do.”

As Sangki and Ampatuan Jr. got down from their vehicles, Sangki saw a media man he knew from the Mangudadatu convoy, Jimmy Pal-ak, before he was beaten by Unsay’s men.

Sangki said that he saw Ampatuan Jr. identify two women from the group and force them inside a black car, all while instructing his men to confiscate the convoy passengers’ possessions.

Ampatuan Jr. then proceeded to lift each person’s face identifying them before riding off in his own car in the direction of Sitio Masalay, two kilometers away from Sitio Malating.

Sangki recalled that after twenty or thirty minutes, he heard gunshots coming from the direction of Sitio Malating where some of the convoy passengers were left. The shooting lasted for another 30 minutes.

Rasul Sangki Testimony

Rasul Sangki, who was the Vice Mayor of Ampatuan, Maguindanao in 2009 and was among the people with the Ampatuans during the massacre, also became a witness against the accused Ampatuans.

Rasul was supposed to have attended a meeting with the *Sangguniang Bayan* of Ampatuan town on November 23, 2009 when he received a summons from Datu Unsay to go to Sitio Masalay.

When he arrived, he saw armed men pointing guns at two women prostrated to the ground.

According to his testimony, it was Ampatuan Jr. who had shot the two women, alleged to be the wife of Mangudatu and another relative.

Sangki recalled how the convoy passengers had pleaded for their lives, and how the women screamed as they were gunned down by the armed men.

He saw how Ampatuan Jr. had fired at the remaining people, even those who were dead, while the rest of the armed men fired at the vital body parts to make sure that nobody survived.

When Sangki had left the mass grave site, he saw a backhoe proceeding to the massacre site.



(The names and photos of the 58 victims of Ampatuan massacre. Photo from NUJP's Facebook Page)

The aftermath of the carnage

The following day (November 24), then president Gloria Macapagal-Arroyo declared a state of emergency in Maguindanao, Sultan Kudarat and Cotabato City after learning about the massacre.

On November 26, three days after the attack, President Macapagal-Arroyo, who had frequently been identified as a known ally of the Ampatuan family, filed multiple murder charges against Ampatuan Jr. after intense public pressure. At the same time, Senior State Prosecutor Leo Dacera convinced the Ampatuan family to give up Ampatuan Jr.

Eventually, Ampatuan Jr. surrendered and was flown to Manila, where he was taken to the National Bureau of Investigation (NBI) headquarters. He was officially charged with murder, charges that he denied, and had instead blamed the Moro Islamic Liberation Front (MILF).

The hearings began on January 5, 2010 but identifying all the suspects involved in the massacre took a lot of time.

Although 31 suspects were initially charged with the massacre, the number of accused grew to 198 after the Philippine National Police's (PNP) Criminal Investigation and Detection Group (CIDG) added more names to the suspect list as investigation progressed.

The Quezon City Regional Trial Court Branch 221 under Judge Jocelyn Solis-Reyes was assigned to handle the case proceedings.

Deaths and delays during trial period

One of the prosecution witnesses, Suwaib "Jessie" Upham, who claimed to have knowledge of the attack was killed by unidentified gunmen in Parang, Maguindanao on June 14, 2010.

Then in March 2012, state witness, Esmael Enog, was also killed after he testified in court that he had been ordered to drive 36 armed men to the site of the massacre.

Dennix Sakal, another witness and former employee of Ampatuan Jr., was also killed in an ambush on November 18, 2014.

During the trial period, eight of the accused had died including Andal Ampatuan Sr., who died of a heart attack while in detention on July 17, 2015. As a result, his case never went to trial despite being primed as the main mastermind behind the massacre.

At the same time, 70 of the detained suspects had asked to be released on bail which meant that the court had to hear their petitions alongside the lengthy proceedings.

Ampatuan Jr. also filed for bail; his petition was eventually denied by Judge Solis-Reyes on May 30, 2017, seven years after the trial began.

The defense filed numerous motions in the years between 2009 and 2019. Lawyers for the three main accused Ampatuans alone filed six motions and an additional related motion, which added months to the legal process.

Finally, the Supreme Court of the Philippines intervened to speed up the trial proceedings. New guidelines were issued in December 2013, naming an "assisting judge" to Branch 221 who would take over some of the work in the trial.

With the long list of suspects still waiting to be arraigned and arrested, no one had expected a speedy trial. By early 2013, only 81 out of the 98 arrested suspects had been arraigned.

A long fight against injustice

After ten long years, Judge Jocelyn Solis-Reyes of the Quezon City Regional Trial Court Branch 221 finally submitted the case for decision in August 2019.

She was then required by the Supreme Court circular to issue her verdict 90 days later in November 2019. A 30-day extension was granted after she cited the sheer volume of records associated with the case.

The promulgation of the decision was then scheduled on December 19, 2019.

On the day of the promulgation, supporters from the media community and human rights activists flooded the gates of Camp Bagong Diwa, Bicutan, Taguig City – where the promulgation was set to be held.

In a historic verdict, Judge Jocelyn Solis-Reyes declared Andal Unsay Ampatuan Jr., Zaldy Ampatuan, Datu Anwar Sajid Ampatuan, Datu Anwar Ampatuan Sr., Datu Anwar Ampatuan Jr. and 24 others guilty beyond reasonable doubt and sentenced them to *reclusión perpetua* (life or permanent imprisonment), which ranges from 20 years and one day to 40 years of imprisonment without parole.

Unfortunately, over 50 other suspects, including Datu Sajid Ampatuan and Datu Akmad Ampatuan, were acquitted.

The 58th victim of the massacre

Despite the initial victory, justice remains elusive for Reynaldo “Bebot” Momay, one of the 32 media workers who died in the gruesome Maguindanao massacre.

In the decision released during the promulgation, Judge Jocelyn Solis-Reyes only declared the 28 primary suspects guilty of 57 counts of murder, dismissing the civil case filed by Momay’s family.

According to the court ruling, there was no evidence of the actual death of Momay.

“He has no cadaver and neither was his death certificate presented on record,” the court ruled, adding that the prosecution had also failed to establish that the dentures found in the mass grave site belonged to the 58th victim.

The victims’ family decried this decision and said that justice was not yet complete until the last of those responsible were held accountable.

Reynafe Momay-Castillo, daughter of Reynaldo Momay, said that ten years of waiting is too long only to have the court dismiss her father’s case.

“Through the years, I never let go of the fight to seek justice. I never once thought that I am on the losing end. I still have the light of hope that the lives that were lost were for a cause,” said Reynafe.

“My father’s life is not just a speck. He was all the father that I had. The same is quite true to *[sic]* the families that were left without a mother, a father, a friend and a colleague,” she added.

“A day, a month or a year of delay in the resolution of the Maguindanao massacre case will not only deny us justice but will deprive every victim and their family a chance at redemption.”



(Photo from NUJP’s Facebook Page)

Fourteen years of partial justice

This year marked fourteen years since the incident, and the fourteenth year that the families’ continue to demand for justice. Until today, families of the victims remain steadfast in calling the court’s decision a “partial victory” as barely half of the accused received verdicts.

As of 2022, only 44 people had been convicted over the Ampatuan massacre. An announcement from the Office of the Press Secretary stated that an appeal by

prosecutors had led to the conviction of another person as an accessory to murder. Nevertheless, there are other cases that remain under appeal.

Families of the victims and press freedom advocates have continued to call for the conviction of 83 other alleged perpetrators who are still at large, and the inclusion of journalist Reynaldo Momay as among the list of the victims.

During the 14th commemoration of the massacre, Emily Lopez, whose brother Arturo Betia was among those killed in 2009, reminded the public that the families' fight continues despite the 2019 verdict.

"First, we remind everyone that although some of the suspects got the guilty verdict, many were freed...had continued to remain free, and even won elections during these fourteen years," she said.

Lopez also shared how many of the families have multiple pending cases remaining in the Court of Appeals, despite the initial decision of the regional trial court.

"We've had family members who reached the end of their life without ever seeing justice. Until when should we wait for this?" said Lopez.

The Case of Percy Lapid

By Alyssa Mae Clarin, the National Union of Journalists of the Philippines (NUJP)

What seemed to be a usual night for a veteran radio commentator turned out to become one of the most shocking incidents for the media community in Metro Manila and a case that uncovered the hidden issues in one of the country's largest prisons.

The murder

On October 3, 2022, at around 8:30 PM, veteran broadcast journalist Percival “Percy Lapid” Mabasa was driving to his studio in BF Resort Village, a gated subdivision in Las Piñas, Metro Manila, to host his usual nightly radio show *Lapid Fire* in DWBL radio network.

He was almost near the gates of the subdivision when he slowed down because of a traffic buildup near the entrance, most likely caused by the routine inspection of all vehicles for the sticker required for entry into the subdivision.

According to witnesses, an unknown accomplice had first bumped the rear partition of Mabasa's vehicle with a Toyota Fortuner before two unidentified people riding a motorcycle approached Mabasa's vehicle.

The gunman from the motorcycle fired two shots at Mabasa before speeding away in an unknown direction.

Mabasa was rushed to a hospital but was pronounced dead on arrival.

Mabasa's murder, which took place in the national capital, made Filipino journalists realize that the change in the country's administration did not automatically mean a change in the culture of impunity that has been plaguing the Philippines.

Hard-hitting truth teller

Better known as Percy Lapid, Mabasa's thirty-seven year career as a journalist started as a radio reporter and commentator for multiple radio stations in the country. In his almost four decades in the industry, Mabasa had put effort in highlighting stories of corruption and was well-known for airing hard-hitting commentaries.

Mabasa had been a known critic of former President Rodrigo Duterte's administration, and before his passing, had also criticized some policies of the current administration.

His last upload on his program's Youtube channel featured a commentary on former National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) undersecretary Lorraine T. Badoy, for her red-tagging (the act of labeling, branding, naming and accusing individuals and/ or organizations of being left-leaning, subversives, communists or terrorists) and harassment of Manila Judge Marlo Magdoza-Malagar.



(Journalists, human rights defenders conducted a short lightning program at the Boy Scout Circle, Quezon City condemning the killing of radio commentator Percy Lapid. Photo from NUJP's Twitter account.)

The aftermath

On October 18, 2022, Department of Interior and Local Government Secretary (DILG) Benjamin “Benhur” Abalos announced one of the alleged gunmen to the media.

Thirty-nine year old Joel Escorial had voluntarily surrendered himself to the police. According to the police, he had surrendered out of fear and guilt after authorities published images from the CCTV footage showing an image of the alleged gunman.

According to Escorial’s extrajudicial affidavit, a certain Crisanto “Idoy” Villamor had allegedly contacted him on September 5 to inform him of an assassination job targeting Percy Lapid.

By September 15, Escorial had received a total of PHP140,000 (USD2,527) of the PHP550,000 (USD9,928) bounty offered for the assassination.

Escorial had also identified three other men involved in the killing of Mabasa. The siblings Edmo and Israel Dimaculangan, who had helped him execute the assassination, and another man only known as Orly or Orlando.

Escorial also recalled how he and the three other perpetrators had proceeded to tail and stalk Mabasa from September 22 to October 2, following him on his trips to and from work and learning his routine before executing the plan on October 3.

In his confession, Escorial said that the order was from someone inside of the New Bilibid Prison (NBP), passed through Villamor who was also an inmate there. He also claimed that his other accomplices were contacted by a certain Christopher Bacoto from inside the Bureau of Jail Management and Penology (BJMP) facility for the same job.

After receiving Escorial's confession, the Muntinlupa chief of police immediately went to the NBP to inquire about Crisanto Villamor, but was told that the prison had no records of someone with that name.

Two days later, Justice Secretary Jesus Crispin "Boying" Remulla announced that a certain Jun Villamor, believed to be the middleman Crisanto Villamor, had died at the prison hospital.

The NBI proceeded to perform an autopsy on Villamor's body and said that "there were no apparent signs of external physical injury." However, forensic pathologist Dr. Raquel Fortun criticized the report, pointing out that the autopsy was done two days after Villamor's death and only after the body had been embalmed.

At the same time, Remulla had put Bureau of Corrections (BuCor) director general Gerald Bantag under indefinite "preventive suspension" to facilitate a fair and impartial investigation into the death of Villamor, which had most likely been caused by the shortcomings of the Department of Justice (DOJ) and the BuCor for not securing Villamor after Escorial's surrender.

The timeline of the Kill Contract

On October 24, Philippine National Police (PNP) chief Rodolfo Azurin Jr. revealed that Bantag was actually one of the 160 persons of interest in Mabasa's killing. He was included in the list after finding out that Bantag had been criticized in "Lapid Fire," Mabasa's evening radio program.

Remulla would later add that Bantag appeared to have been furious after Mabasa had taken photos of his home and vehicles last September, and had implied in his radio program that the assets Bantag had accumulated could have been products of corruption.

On November 7, authorities filed murder complaints against Bantag, another BuCor official, and 10 others over the killing of Mabasa and alleged middleman Villamor.

The charges were filed based on the timeline of the kill contract mapped out by the DOJ.

According to the DOJ, Bantag had allegedly given the order to kill Mabasa and tasked BuCor director for security and operations Ricardo Zulueta to lay out the plan on how to execute the assassination.

Zulueta conveyed the instructions to Bantag's alleged aide, Denver Batungbakal Mayores, an inmate detained at the Iwahig Prison in Palawan. Mayores went on to cascade the orders to another inmate, Batang City Jail (BCJ) gang leader Alvin Cornista Labra, who then contacted another inmate, Sputnik gang leader Aldrin Micosia Galicia.

Galicia was the one who tasked Villamor, a member of the Sputnik gang, to look for a hitman outside NBP.

It was at this point that Escorial had received the assassination order and undertook the hit.

Authorities also suspect that the killing of Villamor had also been ordered and cascaded in the same order, with the same gangs involved.

After his suspension, Bantag went on to do an exclusive interview with SMNI, a broadcasting company well-known for supporting the Duterte, and denied the allegations against him. During this interview, he called Remulla a liar and challenged him to step down from his post.

In another interview with CNN Philippines, Bantag said that he would not surrender to authorities even if a warrant of arrest was issued against him for as long as Remulla remained justice secretary.

By November 16, 2022 a total of 11 subpoenas and summons had been sent out to Bantag's last known address in Caloocan City.

When the DOJ began its preliminary investigations into the charges against Bantag and the others accused of murdering Mabasa and Villamor on November 23, both Bantag and Zulueta failed to present themselves to the DOJ.

The following month, Bantag submits a motion for inhibition to transfer the preliminary investigations from the DOJ to the Office of the Ombudsman, which was denied in January 2023.

In April 2023, a Muntinlupa court issued a warrant for the arrest of both Bantag and Zulueta for Villamor's murder. Soon after, a Las Piñas City court also issued another arrest warrant for both individuals, for the murder of Mabasa.

Justice delayed

It was only on December 7, 2023 that the Las Piñas City court found Mayores guilty of being an accessory to Percy Mabasa's murder, and sentenced him to 2 to 8 years of imprisonment.

According to a statement released by the DOJ, Mayores had pleaded guilty as an accessory to the crime. He had allegedly conspired with former BuCor chief Bantag and Zulueta in the planning and murder of Mabasa.

Unfortunately, the alleged masterminds remain at large.

Despite his wanted status, Bantag was able to attend his son's graduation at the Philippine National Police Academy (PNPA) in Silang, Cavite last March. He had also been interviewed twice by three vloggers while continuing to evade capture.

Continuing the legacy



(Photo taken from the NUJP Facebook Page)

Veteran journalist Roy Mabasa, brother of slain journalist Percy Mabasa, announced that he will continue his brother's late night radio program 'Lapid Fire' as its new host.

Roy Mabasa's decision is a way to continue his legacy, as well as showcase his own brand of hard-hitting truth telling.

During the pilot episode, which aired on December 7, 2022, Roy criticized Bantag's decision to file a motion of inhibition, and said that the filing was only Bantag's attempts to delay the issuing of the warrant for his arrest and evade capture.

"It is a huge honor, to be able to continue this show on behalf of Ka Percy," Roy said during the pilot episode of the renewed show, which

stayed off the air for two months following Mabasa's murder.

"Although I have also been in this industry for a while, I cannot fill Ka Percy's shoes. He is amazing not only because of his brave reportage, but also his love for the country."

On October 3, 2023, the media community marked the first year of Percy Mabasa's murder and commemorated him during a short program outside the Department of Justice.

"I vividly remember when his murder was reported last year," said NUJP Secretary-General Ronalyn V. Olea.

"We were all shocked, because for the first time in several years, a journalist was killed in Metro Manila," Olea then added that in the past years, reports of journalistic killings were from the provinces, miles away from the national capital region.

“Percy Lapid could have been you, could have been me! This just shows how dangerous our profession is in this country.”

About the National Union of Journalists of the Philippines (NUJP):

The National Union of Journalists of the Philippines (NUJP) is a lateral guild that has been advancing the interests of the Filipino working press while promoting free expression and free press since 1986.

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