



FORUM-ASIA and KontraS

Joint analysis on the situation of defenders in Asia

January 2021 – June 2022

FORUM-ASIA

KontraS
Komisi Untuk Orang Hilang
dan Korban Tindak Kekerasan



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Introduction

This joint analysis in documenting cases of violations against human rights defenders (HRDs) in Asia, with a focus on Indonesia, is a collaboration started in 2020 between the Asian Forum for Human Rights and Development (FORUM-ASIA) and the Commission for Disappeared and Victims of Violence (KontraS).

It is important to note that throughout this report, there are differences in numbers of cases and numbers of HRDs affected, due to differences in documentation methodology. This analysis intends to present and examine the pattern of violations against HRDs and might not reflect the actual numbers of violations happening on the ground, which is likely higher than the cases documented here.

The **Asian Forum for Human Rights and Development (FORUM-ASIA)** is a network of 85 member organisations across 23 countries, mainly in Asia. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity development and solidarity actions in Asia and beyond. It has consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. The FORUM-ASIA Secretariat is based in Bangkok, with offices in Jakarta, Geneva and Kathmandu. www.forum-asia.org

Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS), which was established on March 20, 1998, is a task force formed by a number of civil society organizations and community leaders. KontraS reaffirmed its vision and mission to participate in the defend for democracy and human rights together with other civil society movement entities. More specifically, all the potential and energy possessed by KontraS are directed to encourage the development of the characteristics of a system and state life that is civil and political away from the violence approaches. Both approaches to violence are born from the principles of militarism as a political system, behavior, and culture. www.kontras.org

Asia at glance

In the period considered in this analysis, Asia has witnessed an overall repression of civic spaces, coupled with widespread hostility towards Human Rights Defenders (HRDs) and their work. This precarious regional context was exacerbated by the ongoing crises that affected some Asian countries, and whose effects are still taking place and impacting defenders.

The attempted coup in Myanmar, staged by the military on 1 February 2021, unleashed an unprecedented season of violations against human rights defenders, who stood at the frontline of those opposing the military rule and demanding the restoration of democracy at large.

In Afghanistan, the Taliban took control of the country on 15 August 2021, leading to a dramatic deterioration of the situation of civil society and human rights defenders, which was already alarming before the takeover. Community-based Women Human Rights Defenders (WHRDs), media workers, and staff from Non-Governmental Organisations were particularly affected by violence and harassment from the Taliban, paying a high tribute for their brave struggle for upholding human rights.

In January 2022, the sharp rise of gas price triggered a series of mass protests across Kazakhstan, where civilians took the street to express their grievance against the government, deemed responsible for impoverishing the country and its citizens.

While the demonstrations also led to violent incidents, a number of community-based and pro-democracy defenders, including WHRDs, faced assault, arbitrary arrests, and other violations from the authorities for taking part in peaceful rallies, or reporting to the public the violent responses of police.

From March 2022, large sectors of civil society in Sri Lanka joined mass protests to call for the resignation of its President Gotabaya Rajapaksa and his family members that were serving in top institutional roles. Rajapaksa and his administration were accused of the lasting mismanagement of the national economy. Rajapaksa eventually stepped down in July, but several defenders such as students, trade unionists, and pro-democracy monks were met with arrest and physical violence, including being pelted by rubber bullets and water cannons used by the police.

From 1 January 2021 to 30 June 2022, FORUM-ASIA has documented 1,217 violations committed against HRDs in 21 monitored Asian countries.¹ As a result, at least 3,482 defenders, their family members, and NGOs were affected. The overall number of cases documented is far from being comprehensive of all the violations occurred in Asia in the period considered, but it rather offers an overview of key trends of violations that happened in the region, with many other cases likely gone unreported.

In a similar fashion with the previous years, judicial harassment was the most common violation recorded in the region, with 600 cases documented. It was commonly coupled with the arbitrary arrest and detention of defenders, which ranked second with 560 cases recorded.

This confirms that the arbitrary arrests and detention of defenders, is a common tactic used by government across the region to silence defenders and prevent them from continuing their human rights activities. Also related to the judicial harassment of defenders were the use of repressive legislation (108 cases) and denial of fair trial (74 cases).

Physical violence followed as the third most recurring violations (323 cases), leading to wounds and injuries of defenders in at least 71 cases, many of whom had to be hospitalised. Defenders were also attacked in their houses or offices, where 84 cases of raids were recorded. Lastly, in the period under review, FORUM-ASIA documented 94

¹The cases can be accessed at FORUM-ASIA's [Asian HRDs Portal](#) ↗

cases of killing or death of defenders, claiming the lives of at least 200 individuals including their family members.

Intimidation and threats were prevalent in the region (221 cases), mounting to death threats in at least 32 cases. Family members of HRDs were also particularly targeted by this violation (22 cases), showing how the systemic repression of the work of HRDs and their right to a safe environment extends to their family and loved ones.

Other common violations documented were administrative harassment (96 cases), broadly used to deny peaceful demonstrations as well as registration of NGOs and independent media outlets, and vilification (55 cases), oftentimes in the form of smear campaigns intended to discredit and delegitimise defenders and the work of NGOs.

State actors, including police, the judiciary, government, and military, were the perpetrators in 1,019 or nearly 84 per cent of the total cases recorded of the violations documented. Non-state actors were the perpetrators in 124 cases documented, with corporations being responsible for 25 violations. The perpetrator remained unknown in 49 cases.

Emblematic Situations in Southeast Asia

In the period under review, Southeast Asia was the sub-region with the highest number of cases reported.² As many as 659 violations out of 1,217 were recorded in this sub-region, equivalent to 54 per cent of the total cases documented in Asia.³ A total of 2,052 defenders and family members, communities, and NGOs were affected. While the overall picture for HRDs in Southeast Asia was bleak, in some countries they experienced heightened and multifaceted harassment, or the main trends of violations against them exacerbated.

Myanmar was the country with the highest number of documented violations documented (156 cases), in large majority coming as result of the attempted coup in February 2021. Human rights defenders have been (and continue to be) a regular target of the daily atrocities committed by soldiers and police.

² Including Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor Leste, and Vietnam.

³ The cases can be accessed at FORUM-ASIA's [Asian HRDs Portal](#) ↗



It included student and youth, WHRDs, and other pro-democracy defenders like civil servants, who joined the Civil Disobedience Movement (CDM) opposing the attempted coup. Out of 60 cases of killings and death of HRDs recorded in Southeast Asia, 47 took place in Myanmar, resulting in at least 104 casualties.

Thailand followed with 141 documented violations, most were connected to pro-democracy movements calling for constitutional amendments, together with democratic reforms of the monarchy since 2020. The groups of defenders most affected for bringing forward pro-democracy demands across the country were students and youth (70 cases), and WHRDs (55 cases). Defenders' right to freedom of expression was largely impacted, as it was violated in 121 cases documented in the country.

With 111 violations recorded, **Indonesia** ranked third in Southeast Asia. The western provinces of Papua and its right to self-determination remained key issues, triggering widespread violations against those standing up for Papua's greater degree of autonomy. A total of 35 cases, or more than one third of all violations documented in the country, were related to Papua issues. At the same time, while the total number of individuals arrested has increased, the number of cases of arrests recorded declined, meaning that mass arrests has become more common. It indicates the authorities' attempt to disrupt and further shrink the right to the freedom of assembly. Similarly to the previous years, authorities have resorted to charges of treason to criminalise defenders who were promoting the right to self-determination for the people of West Papua. The Indonesian Government continued to label the work of Papuan defenders as promoting "separatism", thus contributing to their criminalisation and leading to a chilling effect.

In **Cambodia**, where a total of 87 violations were documented, labour rights defenders (25 cases) and WHRDs (24 cases) were disproportionately affected. Starting in December 2021, the casino workers' union of NagaWorld complex held a series of strikes to demand the reinstatement of 365 of their colleagues who were laid off in April. In response to the mass strike, authorities resorted to physical violence, mass arrests, and intimidation, particularly targeting women labour leaders. With the pretext of the prevention of COVID-19, over 100 of the arrested workers were taken to quarantine centers, where they were denied access to basic sanitary services.

Vietnam confirms to be a particularly repressive country for defenders, holding a tight grip on the freedom of expression including online spaces. Bloggers and social media

activists were targeted for voicing their dissent on social media, commenting on social issues, or sharing news that challenge the Government narrative. They were the most targeted group of defenders, with 38 violations recorded out of 82 cases documented in the country. The systemic repression of fundamental freedom is reflected in the widespread use of repressive legislation against defenders (30 cases, more than any other country in Asia).

In line with the regional trend, **judicial harassment** and **arbitrary arrest and detention** of defenders were the most common violations recorded in Southeast Asia, and went hand-in-hand with 330 and 331 cases recorded respectively. Myanmar (114 cases) and Thailand (108 cases) logged a significantly higher number of cases than any other Southeast Asian country. In Myanmar, the military and police systematically used the notorious Section 505 of the Penal Code, to persecute and imprison anyone criticising the military authority, while in Thailand the charges of royal defamation under Section 112 of the Criminal Code continued to be commonplace.

Pro-democracy defenders were the most affected by the two violations above (180 cases), followed by students and youth (139 cases), and WHRDs (124 cases). In an emblematic case, Wai Yan Phy Moe, prominent student leader from Myanmar, was arrested in March 2021 by the authorities with other fellow students, for taking part in an anti-coup demonstration in Yangon. He was found guilty of incitement almost a year later, in February 2022.⁴ During the detention, Wai Yan Phy Moe was brutally beaten by prison guards together with around 90 other inmates, for staging a silent strike against the junta.⁵ Later in September, he was tried for the second time on additional incitement charges for his activities prior to the attempted coup, bringing the prison term he has to serve to seven years.⁶

Physical violence was documented in 173 cases, including at least 36 cases where the HRDs suffered wounds and injuries as result of it. After Myanmar (76 cases), Indonesia recorded the most frequent violations of physical violence (46 cases). In the most serious cases, physical violence led to the death of defenders, for example as result of beatings or firearms. In other cases, defenders died in unclear circumstances shortly after their arrest. In total, FORUM-ASIA recorded 60 cases of **killing** and **death** of defenders, claiming the lives of 146 individuals.

⁴ <https://asianhrds.forum-asia.org/en/entity/h8z7vx9crzk> ↗

⁵ <https://asianhrds.forum-asia.org/en/entity/le2xemc2pw9> ↗

⁶ <https://asianhrds.forum-asia.org/en/entity/2ckklwpg496> ↗

On 7 March 2021, nine community-based defenders and NGO workers in Calabarzon region, southern Philippines, were killed in simultaneous raids into the houses and offices of the defenders over unverified allegations of their affiliation with terrorist groups by the Philippines National Police and the Philippine Army. Four more defenders were arrested in the operation.⁷

Intimidation and threats took place in 97 documented cases, oftentimes with the aim to silence and discourage defenders from continuing their legitimate activities. In at least eight cases, this violation escalated to death threats. Intimidation and threats were also the most common violation against family members of defenders, with 9 cases recorded. It took place in the form of questioning by police officers, house visits, summons to police stations, and threats of arrest. A direct consequence of this violation is the creation of an unsafe and unhealthy environment for the affected HRDs. It also has negative effects on psychosocial well-being of HRDs due to the constant feeling that they or their families are being targeted and in danger.



Wawan Soneangkano is an environmental defender from Southeast Sulawesi Province, Indonesia, serving as Chairperson of the Jaringan Lingkar Pertambangan (which translates as Mining Ring Network). On 21 March 2022, Wawan received a threatening phone call from an unknown number, claiming to be from the mining company, and warning him to stop investigating and reporting the alleged irregularities in the company's operation to the police.⁸

⁷ <https://asianhrds.forum-asia.org/en/entity/sbltxv0mj7e> ↗

⁸ <https://asianhrds.forum-asia.org/en/entity/fxzt7477ck> ↗

Another violation recurring in the region was administrative harassment (50 cases), in the form of cancellation or revocation of the registration of NGOs and independent media outlets, or of denial of legitimate demonstrations, oftentimes alleging COVID-19-related restrictions. Lastly, vilification (21 cases) was used as a tool to delegitimise defenders and expose them to further harassment. This violation included smear campaigns in online spaces and was mostly recorded in the Philippines (17 cases), where it is commonly referred to as red-tagging. It is a common tactic used by authorities to spread false narratives on human rights advocates by alleging their affiliation with banned and violent groups, with the intent to discredit their work, and incite violence and harassment towards them.

It is worth to highlight that oftentimes defenders were targeted with more than one violation at one time, and that several violations, such as intimidation and threats, vilification, and surveillance, took place simultaneously and repeatedly.

In the period under review, FORUM-ASIA identified 16 groups of defenders targeted by violations. **Pro-democracy defenders** were the most affected group, with 241 cases documented. Individuals and groups advocating for democratic principles and institutions, and demanding political pluralism and participation, faced a range of violations. In advancing their demands, pro-democracy defenders faced the systematic violation of their rights to freedom of expression and peaceful assembly and association, with 187 and 110 violations documented respectively. Thailand (108 cases) and Myanmar (105 cases) were the two countries where pro-democracy defenders were most affected.

Tantawan Tuatulanon is a Thai pro-democracy youth and WHRD who encountered multiple harassments for demanding reforms of the monarchy. She was first arrested in February 2022 for conducting a poll on whether the royal defamation law should be repealed.⁹ In March, she was arrested again for livestreaming herself during a royal procession, and charged with royal defamation and under the repressive Computer Crime Act.¹⁰ Despite being granted bail, she was arrested again later that month for attending another royal procession.¹¹ Her bail request was repeatedly denied, leading Tantawan to stage a hunger strike for more than a month.¹²

⁹ <https://asianhrds.forum-asia.org/en/entity/q0jng3s76y> ↗

¹⁰ <https://asianhrds.forum-asia.org/en/entity/bazt6jlsur9> ↗

¹¹ <https://asianhrds.forum-asia.org/en/entity/m7p7viwgrea> ↗

¹² <https://asianhrds.forum-asia.org/en/entity/e16w5r9qf5n> ↗

Students and youth ranked as the second most targeted group, with 182 violations recorded. The past two years have confirmed the leading role played by these group of defenders, who stand at the forefront of the movement for the advancement of human rights in Southeast Asia. Students and youth held mass demonstrations and campaigns in the face of rising authoritarianism and heightened repression, boldly calling for progressive reforms and the upholding of civil and social rights. In challenging authorities, students and youth were met with violations ranging from physical violence, including use of unnecessary and disproportionate force, to arbitrary arrest and detention.

In July 2021, Sarah Irdina Mohamad Ariff, a 20-year-old member of the youth-led collective MISI: Solidariti, was arrested by the police of Kuala Lumpur, Malaysia, for taking part in a rally held under the #Lawan campaign, which called for the resignation of the Malaysian Prime Minister. When summoning Sarah for questioning, the police allegedly harassed her family members. Sarah was held and interrogated for over ten hours on alleged sedition charges, and released late at night.¹³

Women human rights defenders (WHRDs) followed closely with 174 cases recorded. This group of defenders encompasses women defending human rights, as well as NGOs and persons of any gender supporting women's rights or gender-related issues. WHRDs challenge patriarchal structures that are still dominant and widely accepted, while raising their voices to defend the most vulnerable and marginalised communities and groups. Gender-based harassment was prevalent against WHRDs, who were the most affected group by vilification, with ten out of 21 cases documented. Moreover, WHRDs' intersecting identities resulted in their greater exposure to violations, as in the case of women based in remote areas or who are member of indigenous or other minority groups.

Since 2020, a growing number of Cambodian women began to gather on Fridays in Phnom Penh, the country's capital, to peacefully demand the release of their husbands, unjustly detained for being members of the defunct Cambodia National Rescue Party, the then main opposition party. The community movement was regularly attacked by authorities, who used excessive force to disband the peaceful gatherings. One of such violent incidents occurred in June 2021, when the women-led group of around 20 demonstrators were disrupted and manhandled by the police.¹⁴

¹³ <https://asianhrds.forum-asia.org/en/entity/fvqi92dxe8>

¹⁴ <https://asianhrds.forum-asia.org/en/entity/p9kjbwt6h7c>

With 112 violations documented, **land and environmental defenders** were highly targeted as a result of their work. This group includes individuals, communities, and organisations that advocate for the protection of, and access to land and natural resources, that often provide their livelihoods and they have used for generations.

Land and environmental defenders were the group most targeted by violations perpetrated by corporations (from sectors such as agricultural business and extractive industries), who targeted with judicial harassment, particularly in the form of strategic lawsuits against public participation (SLAPPs). SLAPPs are meritless lawsuits intended to drain energy and financial resources of the defendant, and are used to silence and intimidate HRDs.

Dang Dinh Bach is a Vietnamese environmental lawyer who has long engaged with local communities adversely affected by development projects and poor industrial practices in Vietnam. In June 2021, Bach was arrested pending an investigation on alleged tax evasion charges, an accusation commonly used by the Vietnamese authorities to criminalise defenders.¹⁵ In January 2022, Bach was found guilty and convicted to five years in prison.¹⁶ The sentence was upheld in August by the Higher People's Court in Hanoi, and in October, Bach was transferred to a prison 300 km away from his residence.

In the period under review, **state actors** remained the perpetrator in the large majority of violations documented, a trend in line with the past years. They were responsible in 582 out of 659 violations recorded, equal to more than 88 per cent of the total cases. Police alone accounted for 352 violations, followed by the judiciary (145 cases), military (112 cases), and central and local governments (37 cases).

Non-state actors were the perpetrator in an increasing number of cases, including corporations who were responsible for 17 violations. Concerningly, in as many as 30 cases the perpetrator was **unknown**, highlighting the climate of impunity that often surrounded violations against defenders, and depriving them from their right to a healthy and safe environment.

¹⁵ <https://asianhrds.forum-asia.org/en/entity/zyxpkofdnw> ↗

¹⁶ <https://asianhrds.forum-asia.org/en/entity/9ah4htqkueo> ↗

A glimpse of hope: positive developments in region

Despite the multiple challenges that defenders faced, there have been some positive developments that took place in the region.

In February 2021, the Asian Pacific Forum (APF) published the [Regional Action Plan on Human Rights Defenders](#) for National Human Right Institutions (NHRIs), setting out regional and national actions that the APF and its members commit to carry out to support HRDs in the Asia and Pacific region. In February 2022, the APF issued the [Implementation Guidelines for National Human Rights Institutions \(NHRIs\)](#), to assist them in enforcing the Regional Action Plan.

In the aftermath of the attempted coup in Myanmar, the Civil Disobedience Movement (CDM) spread all over the country to counter the military takeover, calling for the restoration of the democracy and civilian rule. The CDM soon developed as a cross-cutting movement, were able to gather and join the efforts of anti-junta citizens from different backgrounds, including but not limited to students and youth, teachers and civil servants, HRDs and NGOs personnel, lawyers, and monks.

Today, despite the atrocities and crimes committed by the military on a daily basis, the CDM continues to stand as the main opposition to the military junta and catalyse the work of those pushing for the return of democracy in the country.

At the sub-regional level, the Milk Tea Alliance (MTA) continues to be a transnational solidarity movement, serving as a loose network youth-led loose that mostly relies on online platforms. The MTA is particularly active in Southeast Asian countries where protest movements are strong such as Myanmar, Thailand, and Indonesia, where it promotes initiatives against authoritarianism and to advocate democracy.

In light of the increasing challenges for human rights defenders in the region. It is important to continue support the work of human rights defenders and build stronger solidarity among the movements, to address the systematic challenges that the defenders are facing in the region. Human rights defenders are key to ensure the fulfilment of human rights and their work shall be celebrated, not criminalised.



Situation of human rights defenders in Indonesia

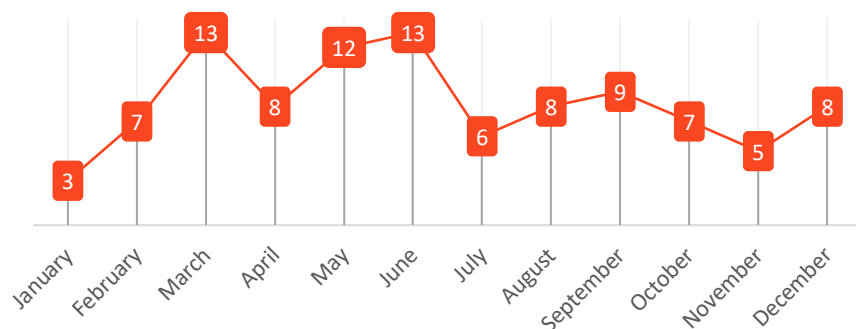
January – December 2021

Introduction

In carrying out their roles, Human Rights Defenders (HRDs) are exposed to complex vulnerabilities. It's important to point out that their works are pivotal in establishing a democratic environment that upholds human rights values. Yet, most of the time their contributions aren't even recognized by the government as something positive; instead, the government label their works as threats. Instead of being provided with adequate protection, HRDs are treated as the "enemies of the state" that must be eliminated. In 2021 alone, there were massive attacks and criminalization against HRDs in Indonesia.

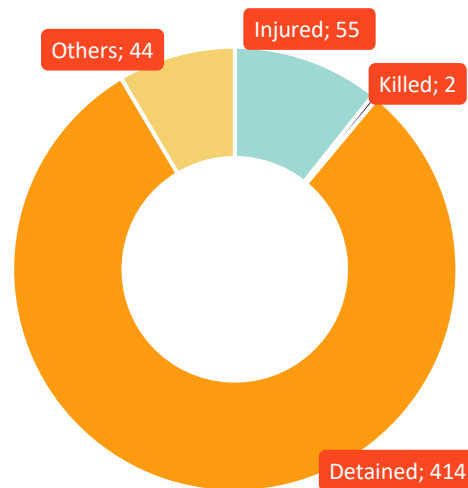
These include, but not limited to: intimidation, terror, torture, and criminalization. The attacks carried out were not all physical, but also psychological, verbal, sexual, digital, and discriminatory.

Number of Violations by Month



KontraS recorded 99 violations that happened from January to December 2021. The series of events resulted in 55 people getting injured, 2 killed, and 414 detained. Similar to what happened in previous years, the police remained as the main perpetrator in most of the violations. According to our record, the police were involved in 65 cases, followed by the government in 14 cases and unknown perpetrators in 13 cases.

Conditions of Victims



Meanwhile, when it comes to the form of acts/violations, forced disbandment comes as the top with 36 cases recorded, followed by arbitrary arrests within the frame of judicial harassments (31 cases), and intimidation (21 cases). These acts of violations are related to the issues voiced out by the HRDs, such as the issues on Papua, Natural Resources/Environment, the performance of government officials, corruption, and criticizing the Indonesian President.

Amidst the rampant acts of repression carried out by state actors, the position of HRDs in Indonesia has become increasingly vulnerable. The absence of protection from the government towards HRDs has caused many of them fall victim to arbitrary killing, torture, and arrest. The deprivation of rights and the silencing of human rights defenders in voicing their opinions and expressing themselves are shrinking civic space and tearing our democracy apart.

Increased Criminalization Against HRDs

Similar to previous years, the Electronic Information and Transaction Law (ITE Law) is still used as the main instrument or legal basis to limit the freedom of speech and expression, especially against HRDs. In the past year, we found that criminalization is often directed to those who are critical to the government. In 2021 alone, there were at least three incidents where the ITE Law was used to deal with freedom of expression-related events. The article pertaining to the “hate speech offense” is the one that was used the most. The ITE Law is akin to a bogeyman in the eyes of the public. The fact that most of the victims of this law are civilians (9 victims according to our report in 2021) supports this argument.

Instead of revising the ITE Law which has been proven to create a bad precedent for the freedom of speech and expression in Indonesia, the government instead issued a Joint Decree No.229 of 2021, No.154 of 2021, and No. KB/2/VI/2021 on the Guidelines for the Implementation of Certain Articles in Law No.11 of 2008 on Electronic Information and Transactions. These decrees have been signed by the Minister of Communication and Informatics, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police.



Yet this doesn't change the fact that the main problem of the ITE Law is its e ambiguity and unclear norms; that causes law enforcers to be able to bend the law according to their interpretations, and then use the law to criminalize individuals who are expressing their opinions.

The right to freedom of opinion and expression is indeed part of derogable rights. However, the restrictions must comply with the standards set by the international community. The Siracusa Principles state that restrictions on rights must be determined by law. Meanwhile, according to the Johannesburg Principle, restrictions must be determined by laws that are accessible, unambiguous, and made carefully and thoroughly, which allows each individual to see whether an action is against the law or not. Reflecting on these two principles, interpretation guidelines are certainly not the answer to the chaotic use of the ITE Law as a tool to silence freedom of expression. Moreover, if viewed through the hierarchy of laws and regulations, the position of interpretation guidelines is also unclear.

In line with that, the data shows that public officials – from regional heads, ministers, security forces, and others – are the ones that have been using the ITE Law to report others the most¹⁷. This shows that most of the criminalization attempts against HRDs are carried out by state administrators. This rampant criminalization is also inconsistent with the statement of our President, who stated that he wants the ITE Law to be revised. In early 2021, the President said that he would ask the Parliament to revise the ITE Law because its existence often becomes a tool for criminalization and the law does not provide a sense of justice. However, at the end of the day the Indonesian Parliament removed the ITE Law from its list of laws that are prioritized to be reviewed in 2021. Moreover, the government has chosen to issue guidelines for the interpretation of the ITE Law instead, which clearly doesn't answer the existing problems of rampant criminalization.

The case of Saiful Mahdi serves as an example of how problematic the ITE Law is when Mr. Mahdi, a lecturer from Syiah Kuala University, was charged with the ITE Law for defamation because he posted a criticizing message in a WhatsApp group. He was sentenced to three months in prison and was fined 10 million rupiahs. The sentence passed down to Mr. Mahdi not only criminalizes the act of criticizing but also reflects how the law is far from impartial and it is indeed a threat to academic freedom. Seeing how the ITE Law can be applied to a wide range of cases puts academics facing reprisals in a vulnerable position. However, issues problems like this will not occurred if the State is serious about solving various existing criminalization practices. Again, President Jokowi

¹⁷ Lokataru, <https://lokataru.id/revisi-uu-ite-saja-tidak-akan-pulihkan-demokrasi/>

has failed to prove his commitment to prioritizing democracy and human rights issues during his two years in office.

The criminalization against HRDs continues, showing that Indonesia's democracy is in a state of emergency. In 2021 alone, the rampant criminalization was systematically carried out by public officials, with the aid of law enforcers. The state should be protecting the work of HRDs because of their roles in monitoring the performance of the government, especially when it comes to their tasks in protecting human rights.

HRDs Working in the Natural Resource Sector are Vulnerable

In the 2020' People's Consultative Assembly (MPR) annual session, President Jokowi said that all policies in the future must be ecologically sound and uphold the protection of human rights.¹⁸ Yet, the situation on the ground shows the opposite. In 2021, we recorded a lot of severe threats against HRDs, especially those working in the environment sector. In addition to the cases where individuals were affected, a more systematic targeting took place. This can be seen through the passing of several controversial legal products, such as the Cipta Kerja¹⁹ (Job Creation) Act and the Minerba (Mineral and Coal) Law²⁰ that are not only problematic for the environment, but also increases the threat level against HRDs.

¹⁸ Kompas, <https://nasional.kompas.com/read/2020/08/14/11244671/jokowi-semua-kebijakan-harus-mengedepankan-lingkungan-dan-ham?page=all>

¹⁹ Law No. 11 of 2020 on Job Creation.

²⁰ Law No. 3 of 2020 on Amendments to Law Number 4 of 2009 on Mineral and Coal Mining.

Indonesia itself has guaranteed protection for HRDs in the environmental sector, as stated in Law no. 32 of 2009 on Environmental Protection and Management (PPLH). Article 66 states that anyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or be sued in a civil manner.

This protection is also strengthened by the Decree of the Chief Justice of the Supreme Court number 036/KMA/SK/II/2013 which regulates that judges should be progressive and prioritize precautionary principles and carry out judicial activism in environmental cases.²¹

Unfortunately, these various problematic legal products, such as the Minerba Law, pose serious threats to HRDs. This law stipulates that anyone obstructing or interfering with mining activities can be punished. In our opinion, the existence of this law exacerbates the potential for criminalization, which has previously targeted many HRDs who have been very vocal in criticizing the mining industry.

Violence also occurs due to the lack of protection for HRDs working in the environment sector. One of the cases that targeted HRDs in the environmental sector was the case involving villagers from Wadas Village and their lawyers from LBH Yogyakarta (Yogyakarta Legal Aid Foundation). On April 23, 2021, dozens of people who were demonstrating against the mining project in their area were injured as a result of the violent responses from the police. In the aftermath of that incident, 11 people, including the lawyer who was accompanying the villager were arrested. Though these 11 people were later released, the repressive actions of the authorities, by resorting to violence and the act of arbitrary arrests itself were against the law. As stated in Law no. 9 of 1998 on Freedom of Expressing Opinions in Public, anyone who commits violence or threats of violence in order to prevent citizens from expressing opinions in public, can be criminalized.

The various examples of cases above are proof that threats to HRDs and environmental HRDs in Indonesia are still rampant. Based on our documentation, most violence occurred around the issues of criminalization, occupation, mining, evictions, press violence, and destruction/pollution. Most cases that occurred involved state actors, such as the police and military. On the other hand, the private sector is also considered as an actor that threatens the existence of HRDs, such as farmers, activists, students, legal assistants, fishermen, as well as communities and indigenous peoples.

²¹Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 036/KMA/SK/II/2013 on the Enforcement of Guidelines for Managing Environmental Cases.

The rampant violence perpetrated by state actors shows the lack of attention from the government and law enforcers in protecting the roles of HRDs – which is to fight for the environment. The state, in this case, is mostly siding with corporations; casting aside the welfare of the people who often depend on natural resources to make a living. Efforts to convey the community’s aspirations are then silenced by criminalizing those who are vocal in voicing their opinions.

A New Pattern: Cease-and- Desist Letter from Public Officials

Throughout 2021, we witnessed a new pattern used by public officials as an effort to silence criticism: the cease-and-desist letter or *somasi*. There were at least two cease-and-desist letters filed by public officials; first, the cease-and-desist letter sent by the Chief of the Executive Office of the President of the Republic of Indonesia (KSP) Moeldoko to the Indonesia Corruption Watch (ICW), especially to Egi Primayogha and Miftah.

The second cease-and-desist letter was filed by the Coordinating Minister for Maritime Affairs and Investment (Menko Marvest), Luhut Binsar Panjaitan (LBP), to the Founder of Lokataru, Haris Azhar, and KontraS Coordinator, Fatia Maulidiyanti.

Although different, both cases have unfolded in a similar manner. Both letters were filed by public officials with close ties to the President; the issues were related to political economy, and both ended in the criminalization attempts of public officials filing lawsuits for defamation, insults and fake news. This similar pattern is an indication of a new trend by public officials in dealing with criticism. It's important to notice that what the victims did in these cases were forms of criticism and public control of state administrators.

Research or study-based criticism, such as the work of ICW and Haris and Fatia, should be responded to with an open dialogue and steps that are upholding the principles of public openness and humanism. But these criticisms, based on advocacy studies were responded through legal threats and criminalization. The contents of the cease-and-desist letter were also very personal. In fact, both Moeldoko and LBP should be aware that they can't be separated from their role as public officials. They are bound by ethical and legal obligations and are not immune to and should be criticized. Resistance to criticism, as in these two cases, reflects the face of an authoritarian, anti-critical, and undemocratic government.

Moreover, what was done by Egi, Miftah, Haris, and Fatia was a mandate from their organization to protect the public interest; thus their actions can't be prosecuted as individual acts. If their actions are to be prosecuted as individual acts, the constitution itself has clearly regulated that everyone has the right to take part in monitoring government affairs. Article 30 of the Criminal Code, which is the legal basis of the ITE Law stated that if it concerns the public interest, then the act can't be categorized under defamation. Therefore, the criminalization of civil society members criticizing the government is a form of neglect by public officials. They are neglecting the rights of citizens which are clearly protected under the law.

Violence and Criminalization Against HRDs in Papua

Apart from that, we also highlighted the rampant criminalization of HRDs in Papua, Indonesia. In 2021, many HRDs in Papua were criminalized under the charges of treason while carrying out peaceful protests. This criminalization is the product of the stigmatization of Papuan human rights defenders who are considered as separatist and rebel groups. In fact, like citizens of other countries, Papuan HRDs also have the right to freedom of expression which is guaranteed by the constitution.

The stigmatization carried out by the government and law enforcers seems to justify various treatments against Papuan HRDs that degrade their dignity and violate the law. The impact of this stigmatization is racial bias which results in the injustice legal process against Papuan HRDs. Often, Papuan HRDs receive higher sentences compared to others in similar cases.

In addition to the ongoing militarization and securitization approaches, human rights violations against indigenous Papuans continue to be carried out in the form of restraining their right to expression. In 2021, massive silencing of voices of those who were trying to balance or provide additional narratives that are different from the state's narrative on the issue of Papua were carried out.

The pattern of violations was still the same as in previous years, demonstrations were disbanded, while figures who actively spoke out continued to be criminalized. We noted that in 12 months, as many as 25 incidents of violations of civil liberties occurred related to the issue of Papua. In general, seven were injured and 275 were arrested.

One of the cases of criminalization against Papuan HRDs was experienced by two Papuan Student Alliance (AMP) activists, Ruland and Kevin. Both are members of the AMP which focuses on advocating against human rights violations in Papua, the rejection of the extension of the Special Autonomy (Otsus) for Papua, and the rejection of the creation of new provinces in Papua as part of the regional expansion policy. They were arrested on charges of assault and confiscation of goods. However, during the trial process, there was not a single convincing statement that could prove that it was Ruland and Kevin who did this. In addition, this case also contains various irregularities such as the process of arrest and the way they were marked as suspects without being examined as witnesses, which is the usual protocol when dealing with lawsuits revolving around Article 170 (on assault) of the Criminal Code. The irregularities in this case and the judicial process indicates that there were efforts to criminalize human rights defenders who are actively demanding state accountability for human rights violations that have occurred in Papua.

Another case that has surfaced was the criminalization and arbitrary arrest of West Papua National Committee (KNPB) Activist, Victor Yeimo. Victor was arrested for calling for a referendum in the 2019 anti-racism protests in Papua and West Papua. Victor was charged with crimes against state security, or treason, and the desecration of the flag, language, national symbol and national anthem and/or incitement to commit a crime.²² The criminalization and arbitrary arrest of Victor Yeimo was indeed a violation of freedom of expression and is a big obstacle towards a peaceful political solution for the problems in Papua, which is worsening. The Indonesian government has a human rights obligation to be able to distinguish threats of violence from armed pro-independence groups – which can be responded with punishment – and peaceful political expressions protected by international human rights norms and standards – which have been

²² <https://www.cnnindonesia.com/nasional/20210922064326-12-697606/victor-yeimo-aktivis-papua-yang-kini-mendekam-di-penjara> ↗

recognized by Indonesia itself, especially when ratifying the Covenant International Civil and Political Rights (ICCPR).²³

Over the past year, silencing attempts have also been carried out against indigenous Papuans who reject the revision of the Special Autonomy Law (Otsus) Volume II for Papua. The repressive approach, for example, occurred when the authorities were dealing with Cenderawasih University students on September 28, 2021. When students from Cendrawasih University carried out their demonstrations, they were forcibly disbanded. During that incident, the authorities were using violence and they even shot at the demonstrators.²⁴ The same thing happened in Jakarta when the Indonesian People's Front for West Papua and Papuan students voiced their rejection of Special Autonomy Law Volume II in front of the Indonesian Parliament building. They were forcibly disbanded and as many as 50 demonstrators were arrested on the pretext of violating health protocols.²⁵

These examples of silencing the different narratives regarding Papua serve as proof on how limited the spaces provided for Papuans to exercise their rights. The security is very apparent in public places which affects the level of freedom of expression.²⁶ The available spaces should serve as places for peaceful dialogue on issues however, to date, the state has not/has not been able to provide a democratic and safe space, not only for indigenous Papuans but also to carry out discussions about Papua.

The narrative about Papua so far has been continuously and deliberately clashed with the hegemony of (the use of) violence and the argument that *NKRI Harga Mati* (The Sovereignty of the Unitary State of the Republic of Indonesia is Non-Negotiable).

²³ More: <https://kontras.org/2021/05/18/segera-bebaskan-victor-yeimo-tanpa-syarat/> ↗

²⁴ <https://www.cnnindonesia.com/nasional/20200929063548-20-552058/kronologi-pembubaran-paksa-demo-tolak-otsus-mahasiswa-papua> ↗

²⁵ <https://www.cnnindonesia.com/nasional/20210715091801-20-667938/50-mahasiswa-papua-ditangkap-saat-demo-otsus-sudah-dibebaskan> ↗

²⁶ Yulia Sugandi, *Analisis Konflik dan Rekomendasi Kebijakan di Papua*, (Jakarta: Fredierich Ebert Stiftung, 2008), hlm. 12.

The strength of this hegemony makes discussions about Papua deemed sensitive and should not take place in public, even though the issue of Papua must be transparently discussed to unveil the real situation that is happening.

The problems in Papua require an open ear and a big heart; to re-examine the needs and wants of the Papuan for their future. This is in line with the spirit of the first article of ICCPR.²⁷

²⁷ All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The Shrinking Freedom of the Press from Public Officials

In 2021, we also noted that the attacks and criminalization attempts were mostly directed towards journalists. This obviously violates the value of the freedom of the press. In the case of violence against Nurhadi, a Tempo journalist who was investigating a corruption case, the persecution occurred when a number of people suspected Nurhadi, who was in the vicinity of the Graha Samudera Bumimoro Building (GSB) in the Indonesian Army Doctrine, Education and Training Leadership Command complex (Kodiklatal), Surabaya, East Java, on the evening of 27 March 2021. At that time, a wedding reception of the child of Angin Prayitno Aji, an official from the Tax Directorate General, was happening inside the building. Even though he had explained his status as a Tempo journalist and he was there to carry out journalistic duties, they still took Nurhadi's mobile phone and forced him reveal its contents. Nurhadi was also slapped, clamped, and received beatings in several parts of his body. To ensure that Nurhadi did not report the results of his journalistic duty, he was also detained for two hours in a hotel in Surabaya.



Such violence was a criminal act violating at least two regulations: Article 170 of the Criminal Code on the collective use of force against people or goods, and article 18 paragraph (1) of the Press Law on actions that impede or hinder journalistic activities. The maximum penalty for this offense is five years and six months imprisonment.

Apart from violence, journalists are also subjected to criminalization/judicial harassment. These are shown in the case of Muhammad Asrul, a journalist in South Sulawesi that got sentenced to three months in prison because he was accused of defamation. Asrul was criminalized for covering an alleged corruption case involving Palopo's micro-hydro power generators repair budget and the zero chip processing budget.²⁸ Through this case, it was shown that actions that should be protected by the Press Law are also subjected to the ITE Law. Even though the protection of journalists carrying out their journalistic duties are strictly protected as stated in the Press Law, the situation on the ground shows the opposite: journalists still become the target of violence and criminalization.

²⁸ <https://www.suara.com/news/2021/11/25/071000/jurnalis-asrul-divonis-3-bulan-usai-tulis-berita-korupsi-kkj-menciderai-kebebasan-pers?page=all> ↗

The Massive Cyberattacks: Government Stays Silent

In 2021, cyberattacks started to become a serious problem faced by people working on various fields; starting from journalists, women, and some minority groups residing in Indonesia. Cyberattacks towards individuals who are vocal in criticizing using digital media are the consequences of the state's idleness in responding to offline violations. Based on KontraS' monitoring, digital attacks in the form of hacking often occurs when the victims speak up about the government's performance. Based on the results of KontraS' monitoring, most people who ended up becoming victims of digital attacks had previously said or posted something about corruption. We observed that the intensity of digital attacks towards those speaking up on the issue of corruption increased along with the intensity of the discussion about the termination of 57+ KPK (Indonesia Corruption Watch) employees.

From the practice of cyberattacks that occurred, we saw that the perpetrators covered their identities well. To date, we haven't seen any of these perpetrators revealed, traced, or captured by the police. According to our monitoring, there are at least two patterns of cyberattacks that were frequently used: hacking and doxing.

The threats lurking in massive digital media should be given special attention, especially by parties that have the obligation to do so like the government. The government should be taking advantage of the advances in digital information technology and freedom of expression; since both can show the state of various problems that the society is facing and allow the government to reflect upon them, rather than using the digital sphere as a space to suppress people just like what we are seeing today.

Silencing of Academic Discussions in Universities

Academia and university campuses was also targeted by threats and attacks in 2021.²⁹ Every year, the efforts to silence the freedom of speech in the academic environment on campus is increasing in number. This shows that despite two years of President Joko Widodo's leadership, he has not been able to provide a comfortable and safe space for students to express their opinion; both in public and academic spaces. President Joko Widodo is not the only one responsible for creating such spaces; the rectors are also morally responsible to make sure that safe spaces are available in the academic environment.

²⁹ In fact, academic freedom has been regulated through Law Number 12 of 2012 on "Higher Education" Article 8 paragraph (1) which states that: "In the implementation of Education and the development of Science and Technology, academic freedom, freedom of academic discussion, and scientific autonomy apply."



Furthermore, KontraS noted that attempts to silence the academics were carried out through the administration of several forms of academic sanctions such as expulsion, threats, criminalization, suspension, and several other actions. Threatening students with expulsion and lawsuits are things that universities often undertake in an attempt to silence students.

An example of expulsion happened to a student from Institute of Economics 'Developing Indonesia' (STIE INABA) on September 11, 2021.³⁰ The decision letter for the expulsion, which was addressed to a STIE INABA student named Muhammad Ari, was issued after 20 STIE INABA students were punished with suspension, due to their involvement in the students demonstration demanding the campus to reduce the tuition fee amidst COVID-19 pandemic. Looking back at this case, we can see that the university is threatened by the critical actions of their students in advocating for tuition fee reduction during pandemic times. The campus, however, through the office of the rector, should be opening a room for dialogue with the students to listen to their aspirations, instead of suspending and worse, expelling one of their students.

Critics directed toward campuses were countered by universities using various kinds of actions. KontraS interprets the suspension and expulsion letter issued to students as methods to silence students who are demanding for their rights. Aside from the expulsion case that we have explained above, there is another case of a student getting expelled that happened to Usman Maulana. Usman was a student from Al Amanah Jeneponto Islamic Religious Institute, and was expelled on August 12, 2021.³¹ Allegedly, the sanction was given because Usman wrote a poem to criticize the institution and posted it on social media (Facebook); and because he has long hair. This is indeed a concern because it shows how the campus was unable to provide a safe space for students to exercise their freedom of expression.

The university campus, which is ideally a safe space for students to express their opinions, has now become a space full of threats. Policies that are protecting academic freedom, such as the National Education System Law, are intentionally ignored. Academics are silenced when they are voicing their critics or ideas, and this has been happening to both the students and their lecturers.

³⁰ <https://bandungbergerak.id/article/detail/1333/kisah-mahasiswa-stie-inaba-muhamad-ari-jalan-terjal-menuntut-pemotongan-uang-kuliah-karena-pagebluk-berujung-di-do>

³¹ <https://edunews.id/edunews/kampus/gegara-puisi-dan-rambut-gondrong-mahasiswa-iai-al-amanah-jeneponto-sulsel-do/>

Forecasting the Situation of HRDs in the coming future

Based on the situation in 2021, in the context of civic space, we predict that repressive patterns towards HRDs will continue to happen. Demonstrations and public speeches will be responded with repressive actions by the authorities. Civilians who are actively voicing their critical opinions as means to correct the government's performance will slowly be excluded. The government will create a situation where repression will seem legal. A lot of methods will be used to weaken the monitoring efforts carried by civil society. In addition, digital attacks towards those who are offering discourses that are not in line with the government agenda, to balance the narrative, will still be carried out; because to date, none of the perpetrators behind the attack has been revealed to the public.

Moreover, Environmental Defenders are becoming more and more vulnerable due to the repressive actions targeted at them; and we predict that this pattern will carry on in 2022. The absence of a comprehensive regulation protecting HRDs, both HRDs in general and HRDs working in specific field(s) such as natural resources; the government which is currently siding with corporations due to their interest in securing investments; and problematic regulations put Environmental HRDs in a vulnerable situation. We predicted that criminalization attempts, and violence will be used against those who are fighting for the environment. In addition to that, the government's commitment in recovering the economic situation after COVID-19 pandemic and statements issued by public officials that are not ecologically sound will trigger more deforestation, that in turn will create more conflict with people who are depending on the forests. This prediction has been further confirmed by President Jokowi's directive to remove all regional police chiefs and local police chiefs who are unable to protect investment activities.



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