

OGP Civil Society Day: Shrinking civic space

kyungsinpark@korea.ac.kr

www.opennetkorea.org

Part I : state acts shrinking civic space

- criminal defamation laws
- online intermediary liability laws
- "fakenews" regulations online and offline
- assembly and demonstration restrictions

Defamation laws

- Criminal defamation – abused by prosecutors to suppress dissidents/CSOs to protect fellow government officials
- Truth defamation – effectively bans whistleblowing
e.g. revealing non-payment of wages
- Qualified defense not sufficient – “solely for public interest”
- Gold standard: UN Human Rights Committee’s General Comment 34 on Freedom of Expression
 - Incarceration never adequate for defamation
 - Truth shall be a full defense

Online intermediary liability

- Internet : the only remaining civic space → powerless ppl the same power of publicity (mass communication)
 - Broadcasting subject to government influence
 - Newspaper subject to advertiser influence
- Intermediary liability for unknown content
 - general monitoring or prior censorship → death of Internet
- Need intermediary liability safe harbor : no liability for contents they should have known as long as "notice-and-takedown" and "notice-and-restoration"
- Germany's 2017 Network Act : liability for illegal contents? → how to notice illegality? → same as liability for unknown content e.g., Korea's Network Act Article 44-2

“Fakenews” regulation

- “false information for the purpose of undermining public interest”
- Historically, used by oppressive regimes to shut down anti-government messages
- Not consistent with freedom of speech: who is hurt by false information?
- 2010 Korean Constitutional Court: What is public interest?
- 2000 Zimbabwe Supreme Court

Assembly and Demonstration Act

- Demonstration permit – usually required but not as licensing but as notice to the police
- Liability for violating permit condition but no reason to stop demonstration
- Permit denial – the only available ground: violence “Illegal but peaceful march cannot be
- Permit denied for traffic congestion?
- 2016 Impeachment Demonstrations : “Road is for ppl as well as for cars” → evidence of # of cars passed in one day vs. number of protesters expected to join march

Part II: OGP commitments to prevent shrinkage

- Abolish truth defamation law in accordance with ICCPR
- Abolish "false news" provision in accordance with ICCPR
- Revise Assembly Demonstration Act so that permit becomes notice, and peaceful demonstration can never be stopped
- Pass intermediary liability safe harbor; abolish intermediary liability rule