OGP Civil Society Day: Shrinking civic space

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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