

**Submission to the UN Human Rights Committee
115th Session, 19 October 2015 - 6 November 2015
Republic of Korea**

Freedom of Opinion and Expression, Right to Privacy

[Abridged]

Issue 23 Resurgence of Seditious Libel Prosecutions

- “Seditious libel” prosecutions to gag the citizenry criticizing government policies and performance are on the rise in Korea.
- The crime of insult, criminal defamation and “truth defamation” laws are still being vigorously enforced in Korea, despite the warnings of international human rights bodies, including General Comment No. 34 of the Human Rights Committee, which condemned incarceration as punishment for defamation, penalization of truthful statements, and penalization of opinions (“statements not subject to verification”).¹
- Criminal prosecution continues to be a prevailing remedy for defamation or insult. 136 people were incarcerated for defamation or insult over a 55 months period between January 1, 2005 through July 2009 in Korea,² while in comparison only 146 people have been incarcerated for defamation in a 20 months period between January 1, 2005 through August 2007 in all other countries combined.³ [On average, Korea accounted for about 30% of the worlds’ defamation incarcerations in that 20 month period!](#)
- [The trend continues to date and in greater intensity. In 2013, 11,579 people were indicted for defamation or insult \(2,162 for defamation and 9,412 for insult, and excluding 1,233 indicted for online defamation\)⁴, out of which 111 were incarcerated while the remaining defendants were fined.⁵ This is a double-fold increase from 2010, a total of 6,963 people \(2,193 for defamation and 4,860 for insult\) were indicted, out of which 11 incarcerations for insult and 43 incarcerations for defamation resulted.](#)
- As Special Rapporteur Frank La Rue pointed out in his report on Korea, many of these criminal prosecutions are the very cases where private persons are subjected to criminal prosecution for defamation in defense of public officials’ reputation.⁶ We are certain of the political nature of these prosecutions because, as documented in

¹ Para. 47

² MP LEE Chun-Seok’s Press Release, October 19, 2009

<http://media.daum.net/tvnews/view.html?cateid=100000&newsid=20101006161113668&p=newsis>

³ <http://www.article19.org/advocacy/defamationmap/overview.html> (no longer available; last accessed in May 30, 2009)

⁴ Prosecutors’ Office Year Book of 2014, Chapter 6, Pages 926, 966

http://www.spo.go.kr/spo/info/issue/spo_history02.jsp?mode=view&board_no=64&article_no=590945

⁵ Courts’ Year Book of 2014, Section on Crimes, Chapter 5, Page 89

<http://www.scourt.go.kr/portal/justicesta/JusticestaListAction.work?qubun=10>

⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, on his mission to the Republic of Korea (6-17 May 2010), A/HRC/17/27/Add.2, paras. 25, 89 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/34/PDF/G1112134.pdf?OpenElement>

the Annex, most cases result in withdrawal, dismissal, or not-guilty judgments, leaving only the indelible chilling effects on the populace.

- Such abuse is facilitated by the fact that that criminal prosecution applies also to statements not proven to be true, even in absence of privacy concerns, in contrast to the Special Rapporteur's⁷ and UN Human Rights Committee's⁸ specific mandates to exempt such statements. The defendant can only escape liability by proving that the statements were made solely for public interest, a burden of proof not so easy to sustain. For instance, some Korean courts refused the public interest defense of a worker making a truthful statement about his employer's non-payment of wages since the court found that the worker's such statement also had an intention to harm the employer's reputation, i.e. the public interest was not the sole motif.⁹ The practical effect of this law has been that an individual who has encountered revealing truths about corruptions in the government or other powerful entities could not freely share them with others in fear that they may not be able to sustain the burden of proving that 'public interest' was the speaker's 'sole motif'.
- Also, the crime of insult has been also used by government officials to crack down on the people who shared their negative feelings and opinions against the officials. In 2013, out of 9,417 indictments for the crime of insult, 1,038 of them or a little more than 10% were for insulting the police officers. That percentage has only grown as the number of indictments for insulting the public officials increased to 1,397 in 2014, which represents a 35% increase from the previous year.¹⁰ (The total number of insult indictments are not available yet) These "police insult" cases have been used to suppress the participants in demonstrations and assemblies concerning the government policies.
- During the current regime of President Park and the former regime of President Lee, there were many criminal and civil lawsuits of defamation aimed at chilling and gagging people's opinions critical of the government, used by the prosecutions, government officials and/or agencies as well as pro-government action groups. (For detailed information, see Annex).

Suggested Recommendations

- Per General Comment No. 34, the government of the Republic of Korea should abolish Articles 307 (1)¹¹ and 309 (1)¹² of Criminal Act and Article 70(1)¹³ of the "Act

⁷ SR Frank La Rue's Korea Report, Para. 27 "The Special Rapporteur reiterates that for a statement to be considered defamatory, it must be false, must injure another person's reputation, and made with malicious intent to cause injury to another individual's reputation."

⁸ General Comment 34, para. 47, "All. . .penal defamation laws. . . should include such defences as the defence of truth.."

⁹ Supreme Court 2004.10.15 Judgment 2004Do3912

¹⁰ MP Park Nam-chun's press release, March 26, 2015, available at <http://bit.ly/1FR5YG1>

¹¹ Criminal Act Article 307 (Defamation) (1) A person who defames another by publicly alleging facts shall be punished by imprisonment or imprisonment without prison labor for not more than two years or by a fine not exceeding five million won.

¹² Criminal Act Article 307 (Defamation) (2) A person who defames another by publicly alleging false facts shall be punished by imprisonment for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won.

¹³ Act On Promotion of Information and Communications Network Utilization and Information Protection, etc. Article 70 (Penal Provisions) (1) A person who commits defamation of another person by disclosing a fact to the public through an information and communications network purposely to

On Promotion of Information and Communications Network Utilization and Information Protection, etc.”, which criminally punishes statements not proven to be false.

- Per General Comment No. 34, the government of the Republic of Korea should abolish Article 311¹⁴ of the Criminal Act which criminally punishes statements of opinions and feelings, which are by nature not subject to verification, for merely being insulting to others.
- Per General Comment No. 34, the government of the Republic of Korea should abolish incarceration as penalty for all defamation and insult provisions in the Criminal Act and the “Act On Promotion of Information and Communications Network Utilization and Information Protection, etc.”

disparage his/her reputation shall be punished by imprisonment, with or without prison labor, for not more than three years, or by fine not exceeding 20 million won.

¹⁴ Criminal Act Article 311 (Insult) A person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won.

