

**Model 1 (A)**  
**One language (English)**

**SECTION I:**

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**SECTION II:**

Language(s): ENGLISH ONLY

**SECTION III:**

HUMAN RIGHTS COUNCIL

Eleventh Session

Agenda item 3

**Promotion and protection of all human rights, civil, political, economic,  
social and cultural rights, including the right to development**

**SECTION IV:**

**Written statement submitted by People's Solidarity for Participatory Democracy  
(PSPD), a non-governmental organization in special consultative status**

**SECTION V:**

**Title:**

**Need to Protect Free Speech from Government Suppression**

**SECTION VI:**

**Text:**

The Public Interest Law Center, the legal arm of People's Solidarity for Participatory Democracy ("PSPD", hereinafter) would like to report to the international human rights community those domestic laws that violate Article 19 of the UN International Covenant on the Civic and Political Rights and thereby leave free speech systematically vulnerable to government suppression.

**1. Defamation Liability for Truthful Statements**

**Criminal Code, Article 307 (Defamation), Section 1 reads:**

A person who derogates another person's reputation by stating facts publicly shall be subjected to imprisonment or confinement of up to 2 years or a fine of up to 5 million won. <Amended 95.12.29>

**Criminal Code, Article 310 (Exculpation)** reads:

The act under Article 307 Section 1 shall not be punished if it constitutes a truthful statement made solely for public interest.

Korea is one of the very few liberal democratic countries where even truthful statements are vigorously imposed criminal liability if the statements are found to derogate another person's reputation, even in absence of any concern for privacy or publicity rights. The defendant can escape liability only by proving that the statements were made solely for public interest, a burden of proof difficult to sustain. Under this provision, for instance, a worker making a truthful statement about his employer's non-payment of wages has been punished. The practical effect of this law has been that a private person 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 'public interest as the sole motif'. The message of this law is that any speech critical of others can be punished and it has caused both vigorous censorship by the government and self-censorship by media agencies. Recently, in a suicide death of a celebrity actress, she left behind a document that reveals corruptions in the entertainment and media industry and identifies as the main culprits powerful individuals, none of whom were identified by their real names when the incident was reported by media agencies.

## **2. Criminal Prosecution for Defamation**

**Criminal Code, Article 307 (Defamation)** reads:

Section 1. A person who derogates another person's reputation by stating facts publicly shall be subjected to imprisonment or confinement of up to 2 years or a fine of up to 5 million won. <Amended 95.12.29>

Section 2. A person who derogates another person's reputation by making publicly false factual statements shall be subjected to imprisonment for up to 5 years, disqualification for up to 10 years, or a fine of up to 10 million won <Amended 95.12.29>

Korea is one of the very few liberal democratic countries where private persons are vigorously subjected to criminal prosecution for defamation. Most developed countries have abolished (or engaged in the process of abolishing) criminal prosecution for defamation due to a concern that the incumbent government or other powerful individuals influence the prosecutors to suppress their opposition or critics – that is, using not their own resources but the taxpayers' money for the pretext of defamation prosecution. It is under this law that the current regime has prosecuted several reporters and private persons who have written and distributed material criticizing government policies. Recently more than 6 television documentary producers were jailed for producing a piece on the government's beef import policies.

### **3. Insult Law**

**Criminal Code, Article 311 (Insult)** reads:

A person who publicly insults another person shall be subjected to imprisonment or confinement of up to 1 year or a fine of up to 2 million won. <Amended 95.12.29>

Many countries do have the law criminally punishing insult of the King or the heads of the government but the international human rights organizations have for many years asked abolition of these laws in fear that these laws are used only to suppress speech critical of the government.

We believe that the general insult law of the kind preserved in Korea presents an even greater threat because even government officials and powerful individuals can invoke protection under this law and thereby suppress speech critical to them. Other than Germany, Japan, and Taiwan, Korea is the only country in the whole world where insulting another private person is criminally punished. In Germany, the last conviction for insult was in 1960s and insult is processed as private prosecution not involving the awesome power of the government. In Japan, the crime is treated lightly like a civil infraction.

Now, we have not seen this law being vigorously used by the Korean government for the specific purpose of suppressing criticism of the government. The reason is that insult is a crime that requires a formal accusation to be filed with the police by the insulted, and the socially established, who are the likely victims of the insult, have been deterred from filing such formal accusation in fear that such filing may only trigger negative publicity.

However, the existing insult law is being used by the ruling party as a springboard for legislating a stronger cyber-insult law, which is likely to be vigorously used for suppression of dissension. The proposed law applies the enhanced punishment of up to 2 years of imprisonment and allows prosecution even when a supposed victim has not come forward. This means that the police and prosecutors can monitor the internet looking for entries insulting to others, and even before the supposed victims have reported any injury to the police and prosecutors, apply pressure on the speakers through investigations, etc. These investigations can be very well used by the police and prosecutors again to chill the criticism of the government.

### **4. Dissemination of False Information**

**Framework Act on Electronic Communications, Article 47 (Penalty), Section 1** reads:

A person who publicly makes a false communication using electronic communications facilities for the purpose of derogating public interest shall be subjected to imprisonment or confinement of up to 5 years or a fine of 50 million won. <Amended 96.12.30>

Korea is probably the only liberal-democratic country that criminally punishes dissemination of false information even if the information did not cause any specific

harm or result in any illegitimate gain. The UN Human Rights Committee itself has recommended that the law against dissemination of false information be abolished at least five times back in 1990s in fear that this law is used to punish and suppress speech critical of government. The internet pundit Minerva who achieved his fame by writing profusely on and judiciously criticizing government economic policies was indicted under this law for relaying a couple of inaccurate media reports to the net.

## **5. Laws Abrogating Right to Anonymous Communications**

**The Act Regarding Promotion of Use of Information Communication Networks and Protection of Information, Article 44-7 (Self-identification of Bulletin Board User)** reads:

Section 1. Anyone falling under one of the following and installing and operating a bulletin board shall administer the methods and procedure, etc., whereby the users identify themselves, and other necessary measures specified by the Presidential Decree (hereinafter, “user self-identification measures”).. . .

Korea is probably the only liberal democratic country that requires all postings on the selected internet sites to be accompanied by the poster’s real identification, which translates in Korea into the name and resident registration number, the unique identification number given to all Korean nationals for welfare and tax purposes. This requirement has basically exposed private individuals’ identity to the police and prosecutors without any constitutional protection such as warrant requirement. In other countries, the speaker’s identity has been considered part of private information which, as long as the speaker continues to maintain private, the government can access only pursuant to the warrant procedure.

According to the law above, Korean nationals must identify themselves before speaking in cyberspace. This forced self-identification is unprecedented and will again chill the speech critical of the government and powerful individuals.

## **6. Comprehensive Administrative Censorship**

**The Act Regarding Promotion of Use of Information Communication Networks and Protection of Information, Article 44-7 (Ban on Exchange of Illegal Information)** reads:

Section 1. No one shall exchange through electronic communication networks any information falling under one of the following: [obscenity, defamation, stalking, material harmful to children, interference with network, data, or program, gambling, classified information, national security, any other information “aimed at and aiding or abetting a crime.”]

Section 2. As to Items 1 thru 6 of Section 1, Korean Communications Commission may. . . restrict the exchange of that information pursuant to the review of the Korean Communication Standards Commission. . . [omitted]

Korea is probably the only liberal democratic country where an administrative body conducts comprehensive censorship on the internet. Australia also has an administrative censorship body but it censors only pornographic or child-abusive material. Korea's administrative censorship body, Korea Communication Standards Commission(KCSC), censors potentially an unlimited range of material, including but not limited to defamatory material and material aiding and abetting a crime. This law has allowed KCSC to censor even contents which are likely to turn out to be lawful and it had the speakers or the internet service providers pursue judicial review of KCSC's actions. The reality is that no internet service provider has challenged KCSC's decision in court and the person who posted contents is not guaranteed a right to challenge it.

This makes freedom of speech in Korea vulnerable to government suppression. KCSC, a body controlled by a majority of commissioners appointed by the ruling party and the president, uses the authority not to cull out defamatory or crime-aiding-or-abetting material but to suppress the voices critical of the government. This danger has been considered threatening and sufficiently inherent to the nature of administrative censorship that no other liberal-democratic country allows administrative censorship of speech even if it takes place after the speech has been made.