

# ONLY WORDS ON PAPER? FREEDOM OF SPEECH & EXPRESSION IN SOUTH KOREA

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*Article 21 of the constitution of the Republic of Korea guarantees all citizens the rights to freedom of speech and expression. However, these rights have been under increasing threat in recent years due to a number of factors, including direct government interference in media operations, criminal defamation statutes, national security concerns, and regulation of internet content. During this time, the country has come under criticism in these areas from a range of international organizations and the United Nations Special Rapporteur for Human Rights. This paper will provide an overview of the media climate in South Korea along with the attempts made by various administrations to stifle dissenting viewpoints. It will utilize historical narrative to differentiate factors which are common to both sides of the political spectrum from those which are largely defined by political affiliation. This approach will allow for a broader understanding of the issues undermining freedom of expression in the country, placing them in proper historical and cultural context. The main findings of the paper are that both liberal and conservative governments have been guilty of heavy-handed measures to restrict public discussion, but that the recurrence of national security as a salient political issue has had particularly disturbing implications for both freedom of expression and Korean democracy. It concludes by examining some possible causes underpinning these issues, and offering a summary and analysis of the proposals made by the UN Special Rapporteur to improve the climate for free speech in the country.*

## Introduction

*"All citizens enjoy the freedom of speech and the press, and of assembly and association" – Article 21, Republic of Korea constitution*

In November 2013, South Korean President Park Geun-hye embarked on a tour of Europe at a time when the nation was embroiled in a scandal stemming from unlawful election interference on the part of the country's

National Intelligence Service (NIS). Specifically, prosecutors had compiled evidence that the NIS had actively used social media to support President Park and discredit her opponent, Moon Jae-in, during the 2012 presidential election. Two high ranking public servants, former NIS chief Won Sei-hoon, and former commissioner of the Seoul Metropolitan Police Agency, Park Yong-pan, were put on trial for their alleged roles in the incident.

During her stop in Paris, a small group of demonstrators greeted President Park with signs denouncing the election as illegal and calling for the President's resignation. Incensed by the protests, a high ranking member of Park's ruling Saenuri Party, Kim Jin-tae, threatened to have the demonstrators investigated by the Ministry of Justice, and vowed to make them "pay a steep price."<sup>1</sup> While Kim came under heavy criticism for his remarks and was eventually forced to apologize, his comments are indicative of a disturbing trend that has become more apparent in South Korea: government suppression of dissenting viewpoints in both the media and civil society.

In recent years, various South Korean administrations have employed different methods of restricting free speech in the country, but in general, these strategies tend to follow one of four tracks: 1) direct government interference in media affairs, 2) use of criminal libel and defamation statutes designed to limit public discussion of certain issues, 3) placing restrictions on Internet content, and 4) raising national security concerns to limit North Korean-related discussion or research. The latter, by extension, has led to the use of "red-baiting" as a useful tool for conservative political forces to demonize those on the left; indeed, this was a recurring theme of the more than 1.2 million Twitter messages posted by the NIS during the election.<sup>2</sup> While this kind of rhetoric has seen resurgence in recent years, as relations between North and South have worsened and conservatives have consolidated political power in the country, it is important to note that heavy-handed government regulation of the media and criminal defamation indictments were also widespread under the liberal administrations of Presidents Kim Dae-jung and Roh Moo-hyun.<sup>3</sup>

It follows that in identifying threats to free speech, it is important to sep-

1 Editorial, "It's the foul-mouthed lawmaker who will 'pay the price'" *Hankyoreh*, November 11, 2013, [http://english.hani.co.kr/arti/english\\_edition/e\\_editorial/610657.html](http://english.hani.co.kr/arti/english_edition/e_editorial/610657.html) (accessed February 25, 2014).

2 Choe Sang-hun, "Prosecutors detail attempt to sway SK election," *New York Times*, November 21, 2013, [http://www.nytimes.com/2013/11/22/world/asia/prosecutors-detail-bid-to-sway-south-korean-election.html?\\_r=0](http://www.nytimes.com/2013/11/22/world/asia/prosecutors-detail-bid-to-sway-south-korean-election.html?_r=0) (accessed February 25, 2014).

3 Haggard, Stephan and You, Jong-sung, (August 2013). Freedom of expression in South Korea (Working Paper). University of California San Diego.

arate these four distinct issues in order to explain how they fit into the larger political and social context. This paper will also provide an overview of the media environment in South Korea, and highlight certain cases demonstrating abusive excesses on the part of the government. It concludes by examining some possible causes underpinning these issues, and summarizing actions proposed by the UN Special Rapporteur to improve the climate for free speech in the country.

### **Bipartisan Problems**

In 2011, a number of international organizations began sounding the alarm about the decline of freedom of expression in South Korea. That year, one of the leading NGOs in the field of democracy and human rights, Freedom House, released a report downgrading the country's press freedom ranking from "Free" to "Partly Free." The report stated that this was a result of, "increasing official censorship of online content, as well as the government's attempts to influence media outlets' news and information content."<sup>4</sup> Later in the year, United Nations Special Rapporteur, Frank LaRue, was quoted in the *New York Times* criticizing the widespread practice of using criminal defamation suits to target "statements that are true and in the public interest, and [which] are used to penalize individuals who express criticisms of the government."<sup>5</sup> These criticisms were largely due to measures undertaken by the Lee Myung-bak government in response to the massive street protests regarding the importation of US beef in the spring of 2008, and the suspected sinking of the Cheonan warship by a North Korean torpedo in 2010. These will be discussed in further detail later.

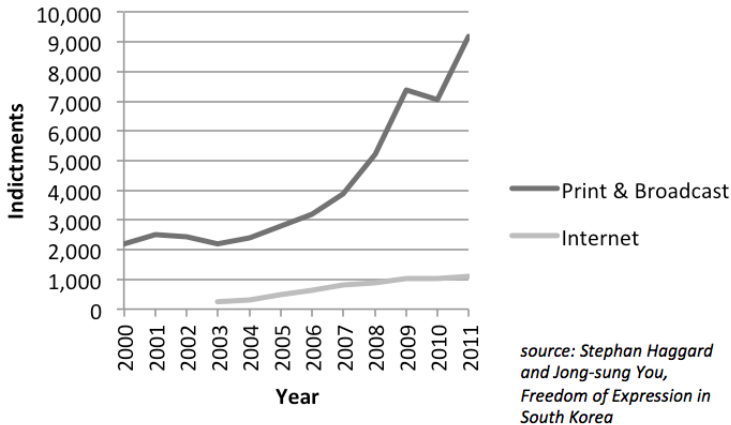
Before proceeding, it is important to note that these actions were hardly unique to the Lee government, and indeed, government interference in media matters and abuse of criminal defamation laws was also prevalent during the liberal administrations of Kim Dae-jung and Roh Moo-hyun. A cursory glance at the following chart makes clear that the uptick in defamation prosecutions actually began during the Roh administration, starting in 2003.

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4 Freedom House, "Freedom of the Press Report: South Korea 2011." <http://www.freedomhouse.org/report/freedom-press/2011/south-korea#.UvgNRPIduA8>(accessed February 22, 2014).

5 Daniel Tudor, Korea: *The Impossible Country*, (Vermont: Tuttle Publishing, 2012), 118.

## Criminal Defamation in South Korea



Presidents Kim and Roh found themselves continually at odds with the predominantly conservative news media in South Korea, and fought back in ways that may seem heavy-handed by the standards of most liberal democracies.<sup>6</sup> Early in his term, President Kim came under fire from the non-partisan Committee to Protect Journalists for bringing defamation charges against several reporters and magazine publishers who had accused him during the election of being pro-communist.<sup>7</sup> Later, as part of his efforts at reforming the country's large conglomerates (*chaebol*) in the aftermath of the Asian Financial Crisis, President Kim had tax authorities audit the finances of the three major newspapers, resulting in the brief imprisonment of the publishers of the *Chosun Ilbo* and *Donga Ilbo* after their conviction for tax evasion. While these actions enjoyed popular support among the public and fit into the president's larger strategy of cracking down on the kind of corporate excess that led to the crisis, there was some suspicion as to whether these measures were also designed as a means of intimidating the conservative media.<sup>8</sup>

Similar controversies ensued during the administration of President

6 The three major dailies are the *Chosun Ilbo*, *Joongang Ilbo*, and *Donga Ilbo* account for over six million in subscriptions and are all editorially conservative; by contrast the leading liberal paper, *Hankyoreh*, has a readership of less than a million (Tudor, p. 167).

7 Committee to Protect Journalists, "CPJ Protests Arrests of South Korean Journalists," June 4, 1998, <https://cpj.org/news/1998/skoreajune498.html> (accessed February 28, 2014).

8 Haggard and You.

Roh. In the fall of 2003, less than a year after taking office, President Roh personally filed a civil defamation lawsuit against the three main conservative dailies, plus the *Hankook Ilbo*, for printing allegations that he had made questionable real estate investments.<sup>9</sup> The President later reconsidered his decision and asked for the case to be suspended just a month after filing the charges, but this action would define President Roh's contentious relationship with the press during the remaining four years of his administration.

The subsequent year, after the Constitutional Court had reinstated President Roh following his impeachment by the National Assembly, animosity between the media and the administration reached new levels. During the impeachment proceedings, conservative media overwhelmingly supported efforts made by the opposition Grand National Party (GNP) to remove the president from office. However, these efforts were unpopular with the public, and led to a backlash at the polls in the 2004 National Assembly elections. Emboldened by the Court's decision to nullify the impeachment, and taking advantage of their newly acquired electoral majority, President Roh's Uri Party passed a media reform bill that was aimed squarely at the *Cho-joong-dong* triumvirate. One of the primary aims of the bill was to limit the market share of any three major newspapers to 60 percent; at the time, the three papers were estimated to control between 70-75 percent of the market.<sup>10</sup>

The media reform bill proved to be an overreach on the part of the President, with the newspaper publishers taking their case to the courts and arguing that the law was unconstitutional. In 2006, the Constitutional Court sided with the publishers and the law was thrown out. By this point, the Uri Party had lost its majority, and endured a humiliating defeat in the 2006 regional elections, preventing President Roh from passing legislation. Government interference in the country's media, however, was about to enter a new phase with the election of GNP candidate Lee Myung-bak in 2007.

### **A Continuing Spiral: The Lee Myung-bak Presidency**

Lee Myung-bak won a landslide victory in the December 2007 presidential election, defeating his closest rival by more than twenty percentage points. The first conservative to be elected in over a decade, President Lee was known as "the bulldozer," a nod both to his aggressive leadership style and

9 Committee to Protect Journalists, "Attacks on the Press Worldwide, South Korea, 2003" March 2004, <http://cpj.org/2004/03/attacks-on-the-press-2003-south-korea.php> (accessed February 28, 2014).

10 Editorial, "S. Korean court rules media laws against major dailies unconstitutional," *Hankyoreh*, June 29, 2006, [http://english.hani.co.kr/arti/english\\_edition/e\\_national/136976.html](http://english.hani.co.kr/arti/english_edition/e_national/136976.html) (accessed February 28, 2014).

his previous career as CEO of Hyundai Construction. Fewer than six months after taking office, the Korean electorate experienced voter's remorse as President Lee's approval rating plummeted below 30 percent. This may have been due to his heavy-handedness and support for controversial policies such as the Four Rivers Project and ratification of the US-Korea Free Trade Agreement.<sup>11</sup> After the investigative journalism TV program *PD Notebook* aired a story questioning the safety of imported American beef, frustration with the new president boiled over, resulting in massive protests that gripped the country throughout the summer of 2008.

The demonstrations would eventually taper off, but one lesson that the Lee administration gained from this show of public discontent was the need to gain a firm control over broadcast media. Unlike many advanced democracies, most of the major Korean broadcasting stations (*KBS, MBC, EBS*) are state-owned, with *SBS* being the lone commercial entity among the major media networks. Within months, the administration, acting through the Korean Broadcasting & Communications Commission,<sup>12</sup> had replaced the heads of several networks, including *KBS, YTN, SkyLife, Arirang*, and the *Korean Broadcasting Advertising Corporation*.<sup>13</sup> These slots were then filled by prominent members of President Lee's campaign team, including media advisor Kim In-kyu, who became the new chief executive at *KBS*. The following year, state prosecutors also brought criminal defamation charges against four producers and a scriptwriter who had been responsible for the *PD Notebook* program. During this period, journalists who criticized governmental policies were liable to face punishment; roughly 200 reporters were sanctioned by their employers or subject to outright dismissal for publishing stories critical of the administration, actions that were later ruled illegal by the Seoul District Court.<sup>14</sup>

In 2012, the last year of Lee's presidency, journalists began to protest. Editorial employees at *Munghwa Broadcasting Corporation*, which aired *PD Notebook*, walked off their jobs in late January. By March, 90 percent of the station's reporters were on strike, and three of the network's six news shows had been suspended.<sup>15</sup> The strikers were soon joined by employees from

11 Editorial, "Lee's decline in popularity," *Hankyoreh*, May 9, 2008, [http://english.hani.co.kr/arti/english\\_edition/e\\_editorial/286442.html](http://english.hani.co.kr/arti/english_edition/e_editorial/286442.html) (accessed March 2, 2014).

12 The KBCC is the governmental agency in charge of regulating state controlled media. At the time, it was chaired by Lee's mentor and campaign manager, Choi Si-joon.

13 Ian Howard, "Korean Media Bias and Government Intervention in Media," *SAIS US-Korea 2009 Yearbook*, Johns Hopkins University, 59-71.

14 Haggard and You.

15 Editorial, "No news is bad news," *Economist*, March 3, 2012, <http://www.economist.com/node/21549008> (accessed March 2, 2014).

KBS and YTN, and the news wire service *Yonhap*. Polls showed that these actions had a high degree of support, with some showing that roughly three-quarters of the Korean public agreed with the protestors' demands for increased media independence, and the resignation of network executives.<sup>16</sup> Journalists complained that they had been forced to kill stories ranging from the environmental impacts of the Four Rivers Project to a wire-tapping scandal involving the country's National Intelligence Service (NIS). These actions were particularly notable, as they represented the first organized demonstrations by Korean media members in almost 20 years.<sup>17</sup>

### Restrictions on the Internet

At the same time as the Lee administration was asserting control over broadcast media, it also stepped up enforcement efforts aimed at silencing Internet critics. Beginning in the early 2000s, the Internet had quickly become a major force in Korean political and social life. In 2002, President Roh harnessed the new media source to gain the support of young voters, leading to a surprise victory over the conservative candidate Lee Hoi-chang in the presidential election. In recognition of the vital role that the Internet had played in his campaign, the first interview President Roh gave following his inauguration was with *ohmynews.com*, an alternative news site where users could upload their own stories. These and other online sources soon evolved as left-leaning counterweights to traditional media, which was dominated by the *Chojoongdong* troika and major television networks. By 2009, over half of South Koreans surveyed got their news from Internet media on a daily basis, compared to less than a third who read a newspaper.<sup>18</sup>

Rather than push for new regulations, the Lee administration mainly took advantage of existing laws to prosecute dissenting voices. One of the most notorious cases came early in President Lee's term, involving a self-styled economic prophet named Park Dae-sung, better known by his Internet handle "Minerva," who had gained a large following on the Daum Agora forum for his predictions about the collapse of Lehman Brothers, and other postings made at the height of the global financial crisis. The government became concerned that these postings were damaging the Korean economy at a time of great volatility in the global market. Dusting off a portion of the

16 Jung-yoon Choi, "South Korea broadcasters keep up strike for media independence," *LA Times*, July 10, 2012, , <http://articles.latimes.com/2012/jul/10/world/la-fg-korea-media-strike-20120711>(accessed March 2, 2014).

17 Jaeyoon Woo, "MBC media strike finally over," *Korea Real Time*, July 17, 2012, <http://blogs.wsj.com/korearealtime/2012/07/17/mbc-media-strike-finally-over/> (accessed March 4, 2014)

18 Tudor, p. 143.

Telecommunications Framework Act, a law which had actually been enacted decades earlier, state prosecutors had Park arrested and tried on charges of electronically spreading false information.<sup>19</sup> He was eventually acquitted at trial, but not before spending more than three months in prison while waiting for his case to be heard.

Ironically enough, police were able to find Park because he had used his name and national registry number to register his account with Daum; a stipulation that became much more widespread after the passage of the so-called “Real Name Law,” in the waning days of the Roh administration. This legislation required that users provide personal information in order to access Internet sites with over 100,000 users. Originally enacted as a way of curtailing malicious online comments and rumors, which had been blamed for the suicides of high profile celebrities such as the actress Jeong Da-bin and singer U;Nee, the law soon morphed into a useful tool for cracking down on political criticism. Abuses of both the Real Name Law and the Framework Act led the advocacy group Reporters Without Borders to list South Korea as a “country under Internet surveillance” in its annual *Enemies of the Internet* reports beginning from 2010. These laws were later nullified by the country’s Constitutional Court, although not before hackers were able to take advantage of the Real Name Law to acquire the national ID numbers of millions of Korean citizens through attacks on databases which housed this information.<sup>20</sup>

During this period, the government created a new agency, the Korean Communications and Standards Commission (KCSC), to regulate online content. The KCSC consists of nine members appointed by the President, six of whom are nominated by the ruling party, and three from the minority. Although the stated aim of the KCSC is to, “safeguard the public nature and create a safe online environment,” critics contend that it simply gives the government another institution with which to control public discussion.<sup>21</sup> Indeed, in looking at figures supplied by the agency’s own website, the com-

19 Matthias Schwartz, “The troubles of Korea’s influential economic pundit,” *Wired Magazine*, October 19, 2009, [http://www.wired.com/magazine/2009/10/mf\\_minerva](http://www.wired.com/magazine/2009/10/mf_minerva) (accessed February 20, 2014).

20 Evan Ramstad, “South Korea court knocks down real name law,” *Wall Street Journal*, Aug. 24, 2012, <http://online.wsj.com/news/articles/SB10000872396390444082904577606794167615620>(accessed February 20, 2014).

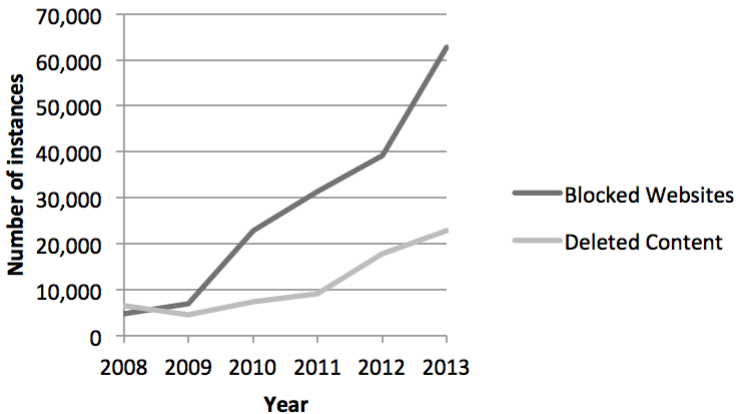
21 For example, People’s Solidarity for Participatory Democracy, a large civic organization, criticized the KCSC in 2011 for “stripping people of their freedom of expression and political freedom by blocking their eyes and ears.” (Jiyeon Lee, “South Korea Boosts Review of Social Media, CNN, <http://edition.cnn.com/2011/12/02/world/asia/south-korea-social-media/>). See also: Human Rights Monitor South Korea. “KCSC’s double standards hinder freedom of press,” February 2014 <http://www.humanrightskorea.org/2014/kcscs-double-standards-hinder-freedom-press/>.



missioners have become much more prolific as time goes on. Removal of objectionable content, which covers a range of categories ranging from obscenity and defamation, to national security issues, has soared since the agency’s creation, from roughly 10,000 blocked or deleted websites/Internet postings in 2008 to over 80,000 in 2013. Much of this activity has been conducted in accordance with the country’s Network Act, which broadly defines “illegal online content” and criminalizes the online circulation of “unlawful information.” The Network Act has been singled out by UN Special Rapporteur Margaret Sekaggya as one particular law which should be drastically reformed in order to better safeguard freedom of expression.<sup>22</sup>

One of the most vocal critics of the KCSC has come from within. Park Kyung-sin, a professor of law at Korea University and a member of the com-

### KCSC Internet Regulation



Source: www.kocsc.or.kr

mission appointed by the liberal opposition, created a blog detailing items that were deemed objectionable by the agency. In numerous interviews, Park has been critical of the heavy-handedness exhibited by the commission and state prosecutors toward Internet content.<sup>23</sup> Shortly after taking his post, Park started a blog, “Censor’s Diary,” intending to bring more transparency

22 UN Special Rapporteur, Margaret Sekaggya, “Report of the Special Rapporteur on the Situation of Human Rights Defenders: Addendum, Mission to the Republic of Korea “ (A/HRC/25/55/Add.2) UN General Assembly Human Rights Council, Dec. 23, 2013.

23 Evan Ramstad, “Prosecutors target censorship critic,” *Wall Street Journal*, March 8, 2012, <http://blogs.wsj.com/korearealtime/2012/03/08/prosecutors-target-censorship-critic/> (accessed February 20, 2014).

to the process, while also demonstrating the kind of content that was being removed by the commission. For his troubles, Park himself was indicted by state prosecutors for violating the obscenity statute after he posted a picture of a naked man on his blog. He was convicted and fined. However, the conviction was later thrown out on appeal.

### The Na Ggomsu Phenomenon

Bloggers and nudists were not the only targets of the Lee administration's Internet crackdown. In 2011, a podcast called "NaneunGgomsuda (Na Ggomsu)" (rough translation: "I'm a petty creep") was started by a group of four men, including a former National Assembly lawmaker named Jeong Bong-ju.<sup>24</sup> The show quickly became known for its sarcastic and biting criticism of the government and within a matter of months had amassed a huge following, especially among young Koreans. At its peak, the podcast averaged as many as two million downloads per week, making it one of the most popular podcasts on the Internet.<sup>25</sup> The hosts continually mocked the president, referring to him as "His Highness" and broke new ground in a country where satirizing political leaders was largely unheard of.

The power of "Na Ggomsu's" influence was made clear in the 2011 Seoul Mayoral election, when allegations from another of the show's hosts, reporter Choo Chin-woo, that conservative candidate Na Kyung-won had spent 100 million won on an annual membership at a beauty clinic sent shockwaves through a campaign being waged largely on issues of economic inequality.<sup>26</sup> After losing the election to the independent candidate Park Won-soon, Na sued Choo for libel over the allegation, but an ensuing prosecutorial inquiry found that there were insufficient grounds to bring the case to trial. Na's political career would take a further hit after Choo raised suspicions that her husband, a judge at the Seoul District Court, had pressured prosecutors to file a libel case against a blogger who had been critical of Na when she was a member of the National Assembly. The allegations, eventually revealed to be true, forced Na to drop out of the 2012 legislative elections.<sup>27</sup>

24 The title of the program was in reference to a rather unflattering nickname that was bestowed on the president by his critics.

25 Choe Sang-hun, "By lampooning leaders, talk show channels young people's anger," *New York Times*, Nov. 1, 2011, <http://www.nytimes.com/2011/11/02/world/asia/lampooning-leaders-talk-show-channels-young-peoples-anger-in-south-korea.html> (accessed February 21, 2014).

26 Donald Kirk, "Leftist wins Seoul mayoral race," *Christian Science Monitor*, October 26, 2011, <http://www.csmonitor.com/World/Asia-Pacific/2011/1026/Leftist-wins-Seoul-mayoral-race-How-it-could-alter-South-Korea-s-ties-with-North-Korea> (accessed February 21, 2014).

27 Editorial, "Na steps down from coming elections," *JoongAng Daily*, March 9, 2012, <http://korea-jjoongangdaily.joins.com/news/article/article.aspx?aid=2949648> (accessed February 21, 2014).

“Na Ggomsu’s” burgeoning influence did not go unnoticed by the administration, and it wasn’t long before the show’s hosts found themselves in trouble with state prosecutors. In December of that same year, just two months after the mayoral election, Jeong was indicted for remarks he had made four years earlier during the presidential campaign regarding President Lee’s connection to a stock manipulation scandal involving one of his former business partners.<sup>28</sup> Jeong was convicted and given a one year prison sentence for violation of election and defamation laws. This was the same year that criminal defamation cases in the country passed the 10,000 mark; a stunning five-fold increase in less than a decade.

Little more than a year later, Choo and the show’s founder, Kim Ou-joon were also indicted on defamation charges stemming from an article that Choo had written alleging that Park Geun-hye’s brother, Park Ji-man, was involved in the murder of a cousin. The article was written at an especially sensitive time in the lead-up to the 2012 presidential election. These allegations were then repeated on the podcast, landing the pair in court and facing three year-prison sentences.<sup>29</sup> However, the two men were eventually acquitted of all charges during a jury trial in October 2013.

### No Signs of Let-up: The Park Geun-hye Era

In December 2012, the conservative party, which was re-branded *Saenuri* in an effort to distance itself from the unpopular President Lee, retained its hold on the presidency when Park Geun-hye won a close victory over the Democratic United Party’s Moon Jae-in. As the daughter of the former Korean authoritarian leader Park Chung-hee, the new President was a polarizing figure even before assuming office. Liberals denounced her as the “Yushin Princess”<sup>30</sup> and worried that her election marked a step backwards for the country’s democracy.

Despite being in office little more than a year, President Park’s term has been steeped in controversy, mainly due to the role that the National Intelligence Service is alleged to have played during the campaign, using social

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28 Ironically, these allegations were first voiced by Park Geun-hye while campaigning for the conservative party’s presidential nomination in 2007 (see: “Point of no return for Lee Myung-bak and Park Geun-hye,” *Chosun Ilbo*, June 8, 2007, [http://english.chosun.com/site/data/html\\_dir/2007/06/08/2007060861025.html](http://english.chosun.com/site/data/html_dir/2007/06/08/2007060861025.html)) (accessed November 15, 2013).

29 Kim Hee-Jin “Men acquitted in defamation suit,” *JoongAng Daily*, Oct. 15, 2013 <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=2979410> (accessed November 15, 2013).

30 This is in reference to the Yushin Constitution instituted by her father, which ended democratic governance in South Korea from 1972-1987. Large portions of the document were drafted by Kim Ki-choon, who is currently serving as President Park’s Chief of Staff.

media to actively support the conservative candidate while tarring Moon with language straight out of the Cold War era. The agency was also found to have unlawfully released confidential transcripts of the 2007 summit between President Roh Moo-hyun and Kim Jong-un in an effort to make Moon, who at the time had served as President Roh's chief of staff, appear weak on national security issues.<sup>31</sup> In autumn of 2013, two prosecutors who had been investigating the agency's conduct were forced to resign or placed on suspension; including one, Chae Dong-wook, who had embarrassing allegations about an illegitimate child of a famous person published by the *Chosun Ilbo*. At the time, there was rampant speculation over whether the NIS had been the source of the leak.<sup>32</sup>

As 2013 drew to a close, the government also had to grapple with the longest railway strike in the nation's history when workers from the Korean Railroad Corporation walked off their jobs amidst fears that the Park administration planned to privatize a new high-speed rail line. After the strike was finally resolved more than a month after it began, the president blamed social media for spreading "wild rumors" and stated that the government had to act "quickly and aggressively against groups who distort the situation."<sup>33</sup> These comments raised concerns that the government may be preparing to step up its regulation of online media content, particularly coming as they did a day after the KCC threatened alternative news sites *Newstapa* and *Gobal* for producing broadcast reports which the agency branded "fake news." Founded by former journalists from YTN and MBC, *Newstapa* produced several stories about the election scandal as well as a report detailing how wealthy Koreans are using offshore tax havens to avoid paying income tax.<sup>34</sup> Also coming in for criticism was the *Christian Broadcasting System*, a non-profit organization that began operating the first independent radio station in the country. The KCC claimed that these stations violated the law by producing broadcast news stories despite lacking the necessary credentials to be officially recognized as a proper news station. Kim Eun-gyo,

31 Editorial, "NIS: The beginning and the end of the NLL controversy," *KyunghyangShinmun*, July 24, 2013, [http://english.khan.co.kr/khan\\_art\\_view.html?artid=201307241024287&code=710100](http://english.khan.co.kr/khan_art_view.html?artid=201307241024287&code=710100) (accessed September 15, 2013).

32 Editorial, "President faces big, critical challenge," *Korea Times*, September 13, 2013, [http://www.koreatimes.co.kr/www/news/nation/2013/09/116\\_142836.html](http://www.koreatimes.co.kr/www/news/nation/2013/09/116_142836.html) (accessed September 15, 2013).

33 Ahn Hong-wuk "President Park: We need to correct groundless social rumors," *KyunghyangShinmun*, December 31, 2013, [http://english.khan.co.kr/khan\\_art\\_view.html?code=710100&artid=201312311803447](http://english.khan.co.kr/khan_art_view.html?code=710100&artid=201312311803447) (accessed February 21, 2014).

34 Lee YooEun, "South Korean authorities discredit dissenting voices as 'not real' news," *Global Voices Online*, January 2, 2014, <https://globalvoicesonline.org/2014/01/02/south-korean-authorities-discredit-dissenting-voices-as-not-real-news/> (accessed February 21, 2014).

a host for CBS' news program, tweeted that the situation reminded him of the political situation during the 1980s, when CBS was forced to shut down by the authoritarian regime of Chun Doo-hwan.

A further worrisome development is the government's backing of a bill in the National Assembly which ostensibly seeks to target online gaming, but which critics say represents a renewed push to control objectionable content. The bill, which is being pushed by doctor-turned-lawmaker Shin Eui-jin, would create a government body called the National Addiction Control Committee in charge of curbing addictive behaviors such as alcohol, drugs, and gambling. Lumped into this group, however, is "Internet gaming and other media content."<sup>35</sup> As 'media content' can be defined quite liberally, it is possible that a whole range of Internet sites and resources could come under the jurisdiction of Shin's proposed committee, if the bill is passed in its current form. This would essentially create a second government agency with a mandate to monitor online content.

In sum, although it has been barely a year, the Park administration has done little to show that it will veer away from the path set by its predecessors in terms of controlling views which it deems objectionable, or in promoting an increased tolerance for freedom of speech in the country. On the other hand, the administration does seem to enjoy an overly close relationship with the major media outlets. One of the most recent examples was the hiring of a KBS anchor, Min Kyung-wook, who switched from the broadcast studio to become the administration's chief spokesman in February. This move was reminiscent of George W. Bush's hiring of the notoriously conservative Fox News anchor Tony Snow in 2006, and raises questions about both the Korean government's influence over the mainstream media, and the objectivity of the country's biggest news station.

### Identifying Possible Causes

As evidenced in the preceding narratives, defamation indictments have been a prominent weapon yielded by various administrations in suppressing those views deemed objectionable. South Korea is far from being alone in having criminal defamation laws; indeed, even though a push for the decriminalizing of defamation has been gaining momentum through groups like Article 19 and the Organization for Security and Co-operation in Europe, these laws remain on the books in many advanced democracies. However,

35 Kim Tong-hyun, "A dangerous path: Does the government want to control games or the Internet," *Korea Times*, November 25, 2013, <http://www.koreatimesus.com/?p=2700> (accessed February 21, 2014).

unlike South Korea, defamation is rarely treated as a criminal offense in these nations.<sup>36</sup> The question then needs to be asked as to why these laws are so quick to be enforced in South Korea compared to other democracies?

The Asian notion of “face” (in Korean *chaemyeon*) has been given as one reason for the frequent enforcement of the country’s strict defamation laws.<sup>37</sup> In brief, the theory goes that due to cultural influences such as Confucian teachings and an emphasis on the group rather than the individual, inter-personal relationships tend to take on a heightened importance in Asian societies. Suffering embarrassment in the eyes of others and the subsequent loss of face can thus be severely damaging to a person’s personal and professional livelihood. As a result, protecting one’s reputation becomes paramount. This may be one reason why other Asian democracies which share similar notions of “face,” such as Japan and Taiwan, also have similarly strict laws allowing for the criminal prosecution of libel and slander, in cases where the accusations may be true.

Drawing further on the Confucian influence is the notion of the family-state, with national leaders representing parental figures. An empirical study undertaken in 2006 showed that three-fifths of Koreans agreed with the statement, “the relationship between government and the people should be like that between parents and children,” with nearly half of the respondents stating that citizens should follow all the decisions of their leaders.<sup>38</sup> The same survey noted that forty percent of Koreans gave their assent to official censorship, believing that, “the government should decide whether certain ideas should be allowed to be discussed in society.” Perhaps unsurprisingly, older Koreans – those 60 and above – were far more likely to be included in this category; this same group also forms a strong base of support for the governing Saenuri Party.<sup>39</sup>

Some scholars also point to the country’s legal history as being an important component in its treatment of defamation.<sup>40</sup> The laws governing libel and slander, for example, were directly imported into Korea from Japan

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36 Mike Harris, “The EU’s commitments to free expression: Libel and piracy,” *Index on Censorship*, Jan. 2, 2014, <http://www.indexoncensorship.org/2014/01/eus-commitments-free-expression-libel-privacy/> (accessed February 21, 2014).

37 Tudor, p. 117.

38 Chong-min Park and Doh-chull Shin, “Do Asian Values Deter Popular Support for Democracy,” *Asian Survey* 46, no.3 (2006): 341-361.

39 In the 2012 election, 72 percent of voters in their 60s voted for Park Geun-hye, according to exit polling, (see: Evan Ramstad, “How did Park win? A breakdown,” *Wall Street Journal*, December 20, 2012, <http://blogs.wsj.com/korearealtime/2012/12/20/how-did-park-win-a-breakdown/>) (accessed February 22, 2014).

40 Haggard and You.

as a means to limit criticism of the colonial government. Furthermore, the controversial National Security Law was modeled after the Public Security Preservation Laws in pre-war Japan; these were enacted to curb political dissent and give the government the legal means to suppress communism and socialism in the country. During the early 20<sup>th</sup> century, these laws were transmitted to both Korea and Taiwan via Japanese expansionism, and the National Security Law was enacted in the early years of Korean independence following World War II. This law will be discussed at greater length in the following section.

A further point to note here is the role that political inertia has played in precipitating these trends. As this paper makes clear, both liberal and conservative governments have been guilty of heavy-handedness in dealing with the media and using defamation statutes to silence critics. Although the GNP complained bitterly about the tactics of the Kim and Roh administrations while in the minority, attitudes quickly changed in the aftermath of President Lee's victory in the 2007 presidential election. Rather than making any effort at reform, the new government simply turned around and applied these laws more vigorously. This kind of opportunistic tit-for-tat on the part of both major political parties, combined with the underlying cultural and legal issues, makes implementing the suggestions of various legal scholars and human rights groups – for example, decriminalizing the defamation statutes – an incredibly difficult undertaking.

### **The North Korea Component and the National Security Law**

Until now, this paper has largely neglected the question of national security concerns in limiting freedom of speech in South Korea. This is not to diminish the importance of the issue; on the contrary, were it not for the division of Korea, it is likely that the country's record on freedom of speech and expression would be much more closely aligned with Japan and Taiwan, the two Asian democracies with which it is most often compared. That is to say, there would still be concerns regarding the implementation of criminal defamation statutes and government interference in the media, but it most likely would not be the subject of criticism from a range of international human rights bodies. Indeed, much of the recent condemnation has corresponded with the country's deteriorating relationship with North Korea, particularly following the sinking of the South Korea warship, the *Cheonan*, in 2010.

One obvious indicator of the way that North-South relations manifest themselves in freedom of speech is through the application of the National

Security Law, namely prosecutions under the infamous Article 7. This clause forbids praising the North Korean leadership, joining an ‘anti-government’ organization, or possessing or distributing North Korean media or literature, and indictments under the law tripled in the first four years of the Lee Myung-bak government, from 32 to 91 cases.<sup>41</sup> While the number itself may sound trivial, it marked the first time since the Kim Young-sam administration (1992-1997) that prosecutions rose under the law. This period also coincided with a dramatic upward trend in the removal of websites or comments that were deemed to express a pro-North Korean view, as part of the Lee administration’s broader attempts at censoring online content.

Perhaps more significant than the number of cases was the political nature of the indictments. One instructive example concerns critics of the government’s handling of the *Cheonan* investigation. In the immediate aftermath of the *Cheonan* sinking, the group People’s Solidarity for Progressive Democracy, a progressive organization, sent a letter to the United Nations Security Council questioning the government’s findings that a North Korean torpedo was responsible for the incident. Five days later, the group was indicted by state prosecutors for violating the NSL. After a year-long investigation into the organization’s activities, charges were eventually dropped. Nevertheless, by targeting the PSPD and others critical of the investigation results, including the indictment of a member of the *Cheonan* investigating committee, Shin Sang-cheol, on charges of spreading false facts, the government clearly hoped to suppress discussion of the incident and intimidate members of the public into accepting the official storyline.

The National Security Law has also been used in instances which have little to do with North Korea. On Jeju Island, demonstrations against the construction of a large naval base in the town of Gangjeong have led to the arrests of more than 700 protestors over the course of a five year period beginning in 2008, including the mayor of the town, Kang Dong-kyun.<sup>42</sup> Of those activists, 25 have been imprisoned on charges relating to national security, with one of the protest leaders, Yang Yoon-mo, sentenced to 18 months in prison for what was widely believed to be retaliation for his efforts to bring international attention to the issue.<sup>43</sup> Leaders of a progressive or

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41 Amnesty International, “*Curtailing Freedom of Expression and Association in the Name of Security in the Republic of Korea*,” 2012.

42 Dong-kyun Kang, “The struggle against the US military base on Jeju Island,” *Campaign for Nuclear Disarmament*, October 17, 2013, <http://www.cnduk.org/cnd-media/item/1771-mayor-kang-from-jeju-speaks-about-the-struggle-against-the-us-naval-base> (accessed March 4, 2014).

43 K.J. Noh, “Why Oliver Stone Came to Jeju,” *Counterpunch*, August 23, 2013, <http://www.counterpunch.org/2013/08/23/why-oliver-stone-came-to-jeju-korea/> (accessed March 4, 2014).



ganization based in Seoul, Solidarity for Peace and Reunification in Korea (SPARK), were investigated for violations of the National Security Law and had their server, jinbo.net, shut down by the NIS. The official reason was that the group had violated the NSL by sending a condolence letter to North Korea following the death of Kim Jong-il. SPARK members countered that the investigation was largely due to their support of the ongoing demonstrations against the base.<sup>44</sup> This treatment of dissenting voices in the Jeju naval base controversy illustrates what the Asia Pacific Director of Amnesty International, Sam Zarifi, meant when he stated that, “the NSL is having a chilling effect on freedom of expression and association in South Korea, [and] leading to intimidation and harassment of government critics.”<sup>45</sup>

### The Red Menace: A Recurring Threat in Korean Politics

This renewed emphasis on national security has led to troubling developments for South Korea’s democracy. Along with regionalism, attitudes toward North Korea are one of the dividing lines in Korean politics, with conservatives favoring a much harder stance toward the regime in Pyongyang. Subsequently, red-baiting and attempts to tarnish liberal politicians as *jongbuk* (“pro-North”) has had a long history in Korea, particularly during the authoritarian era and immediately following the democratic transition in 1987. However, these attacks had seemed to diminish in potency with the elections of Presidents Kim Dae-jung and Roh Moo-hyun, and improved inter-Korean relations due to the former’s “Sunshine Policy” of aid and engagement.

With conservatives once again on the ascendancy and relations with North Korea dramatically worsening in the aftermath of both the *Cheonan* sinking and the artillery attack on Yeongpyeong Island in November 2010, there was a concerted effort by members of the ruling party to employ inflammatory rhetoric to discredit political opposition. During the debate over implementation of the US-Korea Free Trade Agreement, a senior aide to President Lee wrote to members of the GNP saying that opposing the deal was tantamount to being “anti-American” and “pro-North Korea.”<sup>46</sup> In the Seoul mayor’s race, Park Won-soon was subjected to similar attacks from conservatives for criticizing the president’s North Korea policy, which he

44 Christine Ahn, “South Korea Cracks Down on Dissent,” *Foreign Policy in Focus*, February 16, 2012, [http://fpif.org/south\\_korea\\_cracks\\_down\\_on\\_dissent/](http://fpif.org/south_korea_cracks_down_on_dissent/) (accessed March 4, 2014).

45 Sam Zarifi, “Should the NSL be abolished?” *Korea Herald*, January 2, 2012, <http://www.koreaherald.com/view.php?ud=20120102000887> (accessed March 4, 2014).

46 Editorial, “Ruling government’s red-baiting offensive,” *Hankyoreh*, November 9, 2011, [http://english.hani.co.kr/arti/english\\_edition/e\\_editorial/504652.html](http://english.hani.co.kr/arti/english_edition/e_editorial/504652.html) (accessed March 4, 2014).

said fostered conditions leading to the *Cheonan* tragedy. The 2012 legislative elections were also marked by accusations that members of a small left-wing group allied with the Democratic United Party, had been infiltrated by pro-North Korean elements.<sup>47</sup>

These attacks were simply a prelude to what was to come in the 2012 presidential election, when the National Intelligence Service and the Army's Cyber-warfare Unit were alleged to have unlawfully waged an extensive social media campaign to discredit the liberal candidate, Moon Jae-in. The bulk of this centered around casting Moon as a pro-North, with the NIS even taking the extraordinary step of leaking confidential transcripts of the 2007 North-South summit. The focal point of the leaks was President Roh's suggestion to make a "peace and economic zone" around the disputed Northern Limit Line in the West Sea; this de-facto boundary between North and South had been the sight of several fatal naval skirmishes between the two sides since the late 1990s.<sup>48</sup> After the story broke, conservatives in government and the media immediately began portraying Moon, who had served as President Roh's chief of staff at the time of the summit, as being untrustworthy on national security issues by linking him to the controversial proposal.

Because the 2012 presidential election was dominated by domestic issues such as the economy and social welfare programs, it is difficult to gauge the effect of the NIS' involvement on President Park's victory. However, the relatively small margin of victory enjoyed by the conservative candidate raises the possibility that the actions of the NIS may have undermined the will of Korean voters. A survey by Research View taken roughly a year after the election shows found that roughly 10 percent of voters who supported President Park would have voted for Moon had they known the extent of the NIS' involvement in the campaign.<sup>49</sup> In an election where the final margin of victory was a mere 3.6 percent, this is a significant finding.

Regardless of whether the NIS' actions did indeed tilt the election for Park, it seems fairly certain that the rise in inflammatory rhetoric throughout the final years of the Lee administration helped set the stage for the

47 Editorial, "Red-baiting tactics surface in South Korea as elections loom," *Yonhap News*, March 27, 2012, <http://english.yonhapnews.co.kr/national/2012/03/27/6/0301000000AEN20120327006200315F.HTML> (accessed March 4, 2014).

48 Terence Roehrig, "The Northern Limit Line," *National Committee on North Korea Issue Brief*, September 2011 [http://www.ncnk.org/resources/publications/NCNK\\_Issue\\_Brief\\_NLL\\_September\\_2011.pdf](http://www.ncnk.org/resources/publications/NCNK_Issue_Brief_NLL_September_2011.pdf).

49 Kim Ri-tae, "One year after election, time to make dissenting voices heard," *Hankyoreh*, December 13, 2013, <http://english.hani.co.kr/arti/ENGISSUE/105/615271.html> (accessed March 4, 2014).

agency's campaign against the liberal candidate. While it is undeniable that tensions between North and South Korea increased during this period, and South Korean policy makers are rightly concerned about the threat posed by the Pyongyang regime, it is of critical importance that this situation not be abused by the ruling party to subvert democracy and fundamental rights to freedom of expression. In that vein, actions such as moving to disband the United Progressive Party (UPP) for its allegedly pro-North platform raise concern that instead of seeking to heighten the level of political discourse, the Park administration may simply be following the well-worn path of her predecessor.<sup>50</sup>

## Conclusions

This paper has attempted to identify some of the challenges regarding freedom of speech and expression in South Korea, as well as the underlying causes of these issues. Many of the points discussed mirror the contents of the 2013 UN Special Rapporteur's report, which, among other suggestions, called for decriminalizing defamation statutes, abolishing Article 7 of the National Security Law, and transferring the duties of the KCSC to an independent body subject to judicial review. These are sensible proposals which would drastically improve the atmosphere for open discussion in the country. Unfortunately, they also run up against a powerful opposition buffeted by both political and cultural forces. President Roh's efforts to amend the NSL failed in 2004 after facing stiff resistance from conservatives in both the government and the media; the situation is hardly more amenable now that public perception and political relations with the North have fallen further in the wake of last spring's nuclear test. Strict defamation laws are sustained by cultural and legal influences that have proven quite resilient even as the country has undergone revolutionary transformation in many areas. These laws also form the basis for the Internet censorship which has further tarnished the country's democratic image.

In forecasting change, the most optimistic scenario may be one in

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50 In August of 2013, four members of the UPP, including sitting lawmaker Lee Seok-ki, were arrested for allegedly plotting to rebel against the government in the case of war breaking out between North and South Korea. The Park administration subsequently requested the disbandment of the UPP in November as "an unconstitutional party." This was first time since the Lee Syngman administration of the 1950s that a government had asked for the abolishment of a political party. While the Constitutional Court has not yet acted on the request, the four UPP members were convicted in February on treason charges and given prison sentences ranging from four to twelve years. See: Choe, Sang Hun, "South Korean Lawmaker Jailed on Treason Charges," *New York Times*, February 17, 2012, [http://www.nytimes.com/2014/02/18/world/asia/south-korean-lawmaker-convicted-of-revolutionary-activities.html?\\_r=0](http://www.nytimes.com/2014/02/18/world/asia/south-korean-lawmaker-convicted-of-revolutionary-activities.html?_r=0) (accessed March 5, 2012).

which a younger generation, not so burdened by historical legacies, begins to seriously question the practice of jailing a person for making an objectionable remark about a powerful figure, or tweeting a picture or message related to North Korea, and demands change. A political movement may emerge which engages in a serious effort to reform these laws rather than self-serving actions which simply make use of them to consolidate power and demonize the opposition. The value of debating widely held beliefs through reasoned argument, an approach most famously advocated by the English philosopher John Stuart Mill, to either verify their legitimacy or expose their faults may start to take on greater social significance. While at present these seem like relatively unlikely scenarios, they are critical steps for South Korean society to take in order to continue the consolidation of its hard-won democracy. **Y**