

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 43/4.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **amendments to the Act on Press Arbitration and Remedies for Damage caused by Press Reports (hereafter, the "draft Press Arbitration Act" under consideration by the National Assembly, which, if adopted without further changes, may severely restrict the rights to freedom of information and of expression of the media.**

According to Article 30-2 of the draft Press Arbitration Act, national courts may impose punitive damages of 5 times actual damages in civil damages suit if it is found that the press has "caused property damage, emotional distress or the infringement of personality right by a false or manipulated report with clear intent or gross negligence".

The requisite intent or gross negligence will be presumed in the following situations:

- retaliatory or repeated causation of damages;
- when the news corrected or followed-up was republished or quoted without sufficient fact checking;
- misrepresenting the content of the news by inter alia constructing new facts though visual inserts and headlines divergent from the essence of the news.

The bill defines "false and manipulated report" as any "act of reporting or mediating false information or information manipulated to be believed as facts through press, Internet news service, or Internet multimedia broadcasting business operator" (article 2 of the draft Press Arbitration Act).

*General observations*

Before sharing my concerns about this draft law, I would like to reiterate your Excellency's Government's obligation to respect and protect the right to freedom of opinion and expression under article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Republic of Korea on 10 April 1990.

Article 19 protects everyone's right to opinion without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. Under international human rights law, freedom of information and expression may be restricted only in accordance with paragraph 3 of article 19 of the International Covenant on Civil and Political Rights, which requires that restrictions be provided by law and be necessary for the legitimate aim of respecting the rights and reputations of others and for protecting national security, public order or public

health or morals.

According to the information I have received, the intention of the authorities is to “establish public confidence in the press”. However, if adopted without further changes, I am seriously concerned that the new legislation may just do the opposite. An independent and diverse media, which disseminates a wide range of information and ideas, plays a critical role in supporting the functioning of a democratic society as it contributes to an informed citizenry, strengthens the rule of law, contributes to the realization of the right of people to participate in public affairs and to the accountability of public institutions.

In light of international norms and standards pertaining to freedom of expression, as stipulated under Article 19 of the ICCPR, I would like to bring to your Excellency’s Government’s attention the following observations and concerns:

*Requirement of legality*

In my recent report to the Human Rights Council on disinformation and freedom of expression ([A/HRC/47/25](#)), I recalled that the scope, meaning and effect of *any* laws limiting freedom of expression and information, including so-called disinformation laws, need to be sufficiently clear, precise and public to meet international law requirements.

In particular, I would like to stress that, under international human rights law, the prohibition of false information is not in itself a legitimate aim to restrict freedom of expression. In effect, people have the right to express ill-founded opinions and statements or indulge in parody or satire if they so wish. In the Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda from 2017, my mandate, together with other regional freedom of expression experts, stressed that the “human right to impart information and ideas is not limited to “correct” statements, and “protects information and ideas that may shock, offend, and disturb.” As a result, any limitation of disinformation must establish a close and concrete connection to the protection of one of the legitimate aims stated in article 19 (3) or article 20 ICCPR, in order to be lawful. Such a direct relationship seems absent in the draft law. In this context, I worry that the draft Press Arbitration Act, as it currently stands, confer excessive discretion to the authorities that may lead to arbitrary implementation.

*Requirement of necessity*

I am concerned that the very vague language of Article 30-2 of the draft law may limit a wide range of expression that is essential to a democratic society, including news reporting, criticism of the government, political leaders and other public figures, and the expression of unpopular and minority opinions. Such concerns are particularly heightened at a time when access to information and the free flow of ideas will be particularly critical ahead of, and during the next presidential election of March 2022.

I would like to underscore the importance of journalism for the public’s right to information. In its General Comment No. 25, the Human Rights Committee emphasized that “free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to

inform public opinion without censorship or restraint.” (para. 26). In its General Comment No. 34, the Human Rights Committee further underlined that “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society” (para. 13).

### *Requirement of proportionality*

While the draft law does not seem to sufficiently and clearly ensure a causal relationship between the problematic speech and the protection of the limited legitimate aims stated in article 19 (3) or article 20 ICCPR, and poses serious risks for journalism reporting, I am further concerned that the punitive damages set forth in Article 30-2 appear to be utterly disproportionate. I am seriously concerned that the excessive punitive damages may result in self-censorship by the media and stifle important debates on matters of public interest.

Furthermore, in the context of media freedom, I am concerned that the broad formulation of intention or gross negligence included in the bill may lead to arbitrary application of the law. In addition, such a presumption of guilt may compel journalists to divulge their sources to refute the presumption of guilt, which would pose grave risks for press freedom. On the other hand, I am concerned that individuals may be held liable for publishing incorrect information as humour or parody, or without knowledge of its falsity.

The principle of proportionality requires that States avoid adopting measures that are excessively punitive. In this context, I would like to recall that in assessing proportionality, the “value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain” (General Comment No. 34, para. 34). With regard to situations that may “cause the infringement of personality right or emotional distress”, which is not further defined in the draft law, I would like to recall that under international norms and standards, defamation laws must be crafted with care to ensure that they comply with paragraph 3 of Article 19 of the ICCPR.

Under international human rights law, the restrictions must be the least restrictive means among those which might achieve the legitimate aim. In the context of disinformation, I have therefore recommended that States consider other approaches, such as adopting or strengthening robust public information laws, ensure enhanced levels of digital and media literacy, and favour the promotion of independent fact-checking mechanisms, among many others (See my report A/HRC/47/25).

Lastly, I am concerned that the punitive measures extend to Internet multimedia broadcasting and Internet news services. While it is well established that digital companies have a responsibility to respect human rights, per the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), holding these companies responsible for mediating news reports deemed to be false or manipulated may end up providing them with immense power in the public and political domain, which does not appear to meet the requirements of Article 19 ICCPR.

As the bill was approved by the Legislative and Judiciary Committee on 25 August 2021 and is expected to be put to a vote before the plenary session of the

National Assembly on 30 August, I would like to respectfully urge your Excellency's Government to share the above observations and concerns with the members of the Parliament who will be voting on the draft law.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above.
2. Please indicate how the draft Press Arbitration Act is consistent with your Excellency's Government's obligations under international human rights law, especially the requirements of legality, necessity and proportionality under Article 19 of the ICCPR.

In light of the above-mentioned observations and concerns, I would respectfully urge a revision of the draft law for the purpose of bringing it into line with international human rights standards. I stand ready to provide your Excellency's Government with technical assistance in this regard.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression