

GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
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Global Information Society Watch 2015

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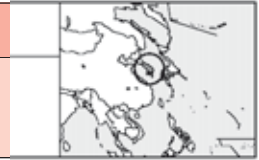
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KOREA, REPUBLIC OF

SEXUAL RIGHTS AND THE INTERNET IN SOUTH KOREA



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Introduction

The Korea Queer Festival 2015,¹ which held an opening ceremony on 9 June and lasted for three weeks, raised a bitter controversy concerning sexual rights online and offline. Around 20,000 people participated in the queer parade that took place on 28 June, while roughly 10,000 people also gathered at the same venue to demonstrate against homosexuality. A police force of over 1,000 was mobilised to prevent conflict between the two groups.

In Korea, the controversy around homosexuality and sexual rights has intensified in recent years. There have been several conflicts around institutionalising the rights of social minorities, including sexual minorities. Online hate speech against sexual minorities has often been aggressive and sometimes carries over into physical violence at offline events.

Kim Jo-Kwang-Soo and Kim Seung-Hwan, who had the first public wedding ceremony as a same-sex couple in South Korea in 2013, announced that they would take legal action against hate speech on the internet. They said that they would bring charges against insulting remarks they received online, such as “homosexuality is immoral”. A number of these online attacks originated from religious groups.

However, some advocates of sexual rights are worried that legal action against hate speech could bring about challenges for freedom of expression. Because of this, how is it best to respond to hate speech?

Policy and political background

Most of the groups who are aggressively against homosexuality in South Korea are Protestants, including the ministers of Protestant churches. Of those who practice religion in South Korea, 21% are Protestants.² Protestant groups have run campaigns

and held demonstrations against homosexuality, sometimes including physical violence and hate speech. This reactionary push has influenced the position of politicians.

Some political leaders have expressed their objection to the recognition of sexual rights. For example, Lee Myung-Bak, a former president, condemned homosexuality in a newspaper interview in 2007, and stated that the union between man and woman is the only “normal” one.³ The current Korean government has also given prominent positions to people who have condemned homosexuality. Hwang Woo-Yeo, who was appointed as the minister of education in 2013, represented a group that demanded the elimination of content in textbooks which dealt with discrimination against sexual minorities, and also objected to same-sex marriage. Choi Ee-Woo, a Chongkyo Methodist Church pastor, who was appointed as a commissioner of the National Human Rights Commission of Korea (NHRC) on November 2014, objected to the enactment of an act that prohibited discrimination and stated that the church should not allow homosexuality and same-sex marriage.⁴

The sexual rights movement and the internet

The first group campaigning for the rights of sexual minorities, Cho Dong Hoi, started in 1993. After that various sexual minority groups and communities began organising around universities. “PC communication” (a term used in South Korea to refer to access to a closed network using a dial-up modem in the 1990s) and the internet played an important role in facilitating the activities of various sexual minority advocacy groups.

The first demonstration by sexual rights groups was held in 1997, demanding the revision of textbooks which described sexual minorities as insane

1 www.kqcf.org

2 기록신문. (2015, 30 January). 기독교 신자 수는 ‘정체’, 헌신은 ‘최고’. www.kidok.com/news/articleView.html?idxno=90115

3 IGLHRC. (2007, 29 May). South Korea: Right Wing Leader Condemns Homosexuality. *OutRight Action International*. www.outrightinternational.org/content/south-korea-right-wing-leader-condemns-homosexuality

4 Lawyers for a Democratic Society (MINBYUN). (2015, 10 March). National Human Rights Commission of Korea’s appointment of anti-LGBT Commissioner Choi Ee-Woo warrants immediate attention. minbyun.or.kr/wp-content/uploads/2015/03/Statement-National-Human-Rights-Commission-of-Korea%E2%80%99s-appointment-of-anti-LGBT-Commissioner-Choi-Ee-Woo-warrants-immediate-attention.docx

people or sexual perverts. After a change in political power in the 1997 presidential election, the NHRC was finally established in 2001 and it was prohibited to discriminate on the grounds of sexual orientation, as defined in the NHRC act.

Internet rights groups have worked together with sexual minority groups in fighting against internet censorship. In 1999, the Korean government planned to introduce a so-called internet content rating system (ICRS), which required all HTML pages produced in South Korea to be classified according to a PICS⁵ rating so that they could be recognised by filtering software provided by the government. An authorised government body, the Korean Information and Communications Ethics Committee (ICEC), was mandated to assess the ratings.

Sexual minority groups, together with other activists such as internet rights groups, actively campaigned against the rating system. This was because the rating was based on criteria of content considered harmful to juveniles under the juvenile protection act, and most homosexual content could be regarded as harmful to juveniles according to the criteria at that time. For example, the ICEC had declared a gay community site called Exzone.com as harmful to juveniles.

If the system had been implemented, homosexual content would be blocked by filtering software. The protests by civil society networks succeeded in part. The system was applied only to websites which might have content harmful to juveniles rather than all websites in South Korea. Filtering software was only required in cybercafés and public institutions such as schools and libraries.

In the end homosexuality was removed from the criteria of content considered harmful to juveniles, which was an important victory for the sexual rights movement in South Korea. Since then there has not been a single case of censorship based on sexual orientation on the internet,⁶ even though homosexuality in movies or on TV could often be subject to censorship by the Korea Communications Standards Commission (KCSC).

Anti-discrimination legislation and hate speech

Although there has not been overt online censorship based on sexual orientation by a government body, this does not mean that sexual minorities are free to openly express themselves on the internet. They are still hesitant about coming out for fear of hate speech. Hate speech is speech that attacks a person or group on the basis of attributes such as gender, ethnic origin, religion, race, disability, or sexual orientation.⁷ Whenever public debate on institutional measures that will prohibit discrimination takes place – such as the debate around the act on the prohibition of discrimination,⁸ an ordinance for the human rights of students⁹ and the charter of human rights for Seoul citizens¹⁰ – hate speech against social minorities, especially sexual minorities, increases substantially online and offline.

Tensions between the sexual rights movement and those opposed to it began with the act on the prohibition of discrimination. The act, which was proposed in 2007, at the end of the term of the comparatively progressive Rho Moo-Hyun government, originally defined 19 prohibited grounds of discrimination, including sexual orientation. Remedial measures included court action or an appeal to the NHRC in cases of unfair treatment regarding employment and education, or being hurt physically or psychologically due to discrimination, as defined in the act.

However, businesses objected to the act, arguing amongst other things that the prohibition of discrimination when it came to medical information would hinder their business. Protestants also opposed the act, stating that it would legalise homosexuality. In the end the government removed seven prohibited grounds for discrimination, including sexual orientation. However the act has not yet been passed in the National Assembly.

Another debate on sexual rights was raised with the enactment of the ordinance for human rights of students under the provincial government. Conservative groups led by Protestants strongly opposed the ordinance, which included a provision on sexual orientation. However, the Seoul City Council passed the ordinance with the support of human rights groups on 19 December 2011. At the time of writing, similar conflicts around the enactment of the ordinance are ongoing in other regional governments.

5 Platform for Internet Content Selection. https://en.wikipedia.org/wiki/Platform_for_Internet_Content_Selection

6 On July, 2015, a website called “Korea Pink Map”, which lists gay-friendly venues, was blocked on the recommendation of the KCC. According to the KCC, it was blocked not because it has content on homosexuality, but because it has a lot of illegal content such as pornography. However, many LGBT groups think it would be an excessive measure to block the whole site just because it has some allegedly illegal content.

7 https://en.wikipedia.org/wiki/Hate_speech

8 likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_W12V1L1Ho06L1S8T4W5C5T4E3K8R1

9 studentrights.sen.go.kr/contents/b2111.jsp

10 opengov.seoul.go.kr/sanction/4474511

In 2013, three opposition party members in the National Assembly once again proposed the act on the prohibition of discrimination, but two of them withdrew their proposal, yielding to objections by the Protestant caucus. In 2014, the mayor of Seoul, Park Won-Soon, who came from a progressive civil society organisation and is considered one of the next presidential candidates for an opposition party, stopped the enactment of the charter of human rights for Seoul citizens. This is because several anti-homosexual groups and Protestant groups expressed their objection to the charter and even interrupted the public hearing on the charter by occupying the room. The reason for their objection was that the charter included the prohibition of discrimination based on sexual orientation.

Korean civil society organisations advocating for sexual rights give priority to the enactment of the act on the prohibition of discrimination in its original form. While the movement pushing for the passage of the act has itself triggered hate speech against sexual minorities, the irony is that the act is necessary to respond to the kind of hate speech it receives. Though hate speech online and offline might be caused by various social and economic factors, we need to establish the principle of non-discrimination by enacting the act to improve the current situation.

The dilemma of freedom of expression versus hate speech

Another challenge faced by Korean civil society advocating for sexual rights is how to ensure freedom of expression while effectively combating hate speech. Freedom of expression, online and offline, has been an important value for progressive civil society in South Korea. Korean civil society organisations have fought for a long time to ensure freedom of expression, especially the freedom to criticise the government in power, the freedom to communicate information about North Korea, and the freedom to create cultural works, especially containing sexual content.

In this context, the recent phenomenon of hate speech against social minorities and other groups – not only sexual minorities but women and immigrants too – could throw human rights and progressive organisations into confusion. Hate speech and hate crimes have become more and more organised and aggressive both online and offline. As mentioned before, conservative groups have been physically threatening by occupying a meeting space and shouting at participants. An internet

community site called ilbe,¹¹ which means “daily best”, is infamous for hate speech against social minorities and against the pro-democracy movement. A lot of articles that ridiculed the Gwangju massacre,¹² former president Roh Moo-Hyun who committed suicide, and victims of the Sewol ferry accident¹³ were posted on the site. This made many internet users angry and led to a public outcry that the site should be closed and those who posted the articles should receive a criminal penalty.

However, some human rights groups and experts are worried that demanding the deletion of articles posted on the site by appeal to the KCSC or accusing those who post the articles of defamation runs the risk of stifling the freedom of expression that progressive groups fought so hard for. In the current political context in South Korea, appealing to the government to solve the problem of hate speech might have the adverse effect of chilling freedom of expression in general.

After many discussions there is a consensus to some extent among human rights groups that hate speech cannot be protected as a form of freedom of expression and needs to be responded to. This is because hate speech may prohibit minorities from speaking freely, so it is not in accord with the intention behind freedom of expression – that all people can participate in the democratic public sphere freely and equally. The freedom of expression declaration published by human rights groups in South Korea in 2008 said that “anti-human rights expression such as instigation of war, racism, and the discrimination of minorities shouldn’t be included under the protection of freedom of expression.”¹⁴ However, this does not mean that criminal prosecution should be the preferred response to hate speech. How to properly respond to hate speech still needs to be discussed in more depth.

Conclusions

Through the struggle of internet rights and sexual rights groups for freedom of expression on the internet, and since the revision of the criteria of online content harmful to juveniles by deleting homosexuality from the criteria in 2004, there has not been direct censorship of online content related to homosexuality on the internet.

¹¹ www.ilbe.com

¹² A popular uprising in the city of Gwangju, South Korea in May 1980, in which up to 606 people may have died. For more information see: https://en.wikipedia.org/wiki/Gwangju_Uprising

¹³ https://en.wikipedia.org/wiki/Sinking_of_MV_Sewol

¹⁴ 민주수호촛불탄압저지를위한비상국민행동, 전국미디어운동네트워크. (2008, 9 December). 표현의 자유 선언

But this does not mean that sexual minorities are free to express themselves on the internet. One of the big barriers to the freedom of expression of sexual minorities is hate speech. As the sexual rights movement grows and demands the institutionalisation of sexual rights, hate speech against sexual minorities has increased and become more aggressive, both online and offline.

One of the priorities of Korean civil society, including sexual rights groups, is the enactment of the act on the prohibition of discrimination. This was the view of the UN High Commissioner for Human Rights who called for South Korea to “enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among prohibited grounds and recognizes intersecting forms of discrimination.” This recommendation was made in the report “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity”, issued on 17 November 2011.¹⁵ In addition, the UN Human Rights Council recommended the enactment of comprehensive anti-discrimination legislation in South Korea in the Universal Periodic Review (UPR) held in 2013. The Korean government accepted this recommendation. Now the government needs to carry out its promise.

Hate speech should be regulated because it prohibits minorities, including sexual minorities, from speaking freely and may lead to physical violence or discrimination. The act on the prohibition of discrimination should define hate speech as discrimination clearly. Non-judicial remedies, such as a request for a correction made to the NHRC, could be considered. Education campaigns to raise awareness of human rights are also necessary, while a criminal penalty might be applied to serious cases of hate speech that could lead to physical threats or other forms of discrimination, such as in the workplace or when it comes to accessing services.

Action steps

The following steps are suggested for South Korea:

- The Korean government and the National Assembly should enact comprehensive anti-discrimination legislation.
- The legislation should include sexual orientation among prohibited grounds for discrimination and provide remedial measures.
- Educational campaigns to raise awareness of sexual rights should be developed.
- Effective measures to combat hate speech while ensuring freedom of expression should be further deliberated.

¹⁵ United Nations High Commissioner for Human Rights. (2011). Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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