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**CIVICUS: World Alliance for Citizen
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1. (A) Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.
- 1.2** In this document, CIVICUS examines the Republic of Korea’s compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyze the Republic of Korea’s fulfillment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in October 2012. To this end, we assess the Republic of Korea’s implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.
- 1.3** During the 2nd UPR cycle, the Republic of Korea received 7 recommendations relating to civic space. Of these recommendations, the Republic of Korea accepted 2 and noted 5. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government partially implemented 2 recommendations and did not implement 5. While the government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination, acute implementation gaps were found with regard to the right to freedom of assembly. According to the CIVICUS Monitor which evaluates the protection of the freedoms of expression, association and peaceful assembly globally, the Republic of Korea is listed as “narrowed.”¹
- 1.4** CIVICUS is deeply concerned by the use of excessive force by security forces to disperse peaceful demonstrations.
- 1.5** CIVICUS is further alarmed by judicial harassment to persecute and silence civil society representatives, union leaders and peaceful protesters.
- In Section B, CIVICUS examines the Republic of Korea’s implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.

¹ CIVIUS Monitor, Republic of Korea, <https://monitor.civicus.org/country/south-korea/>

- In Section C, CIVICUS examines the Republic of Korea's implementation of UPR recommendations and compliance with international human rights standards related to the protection of human rights defenders, civil society activists and journalists.
- In Section D, CIVICUS examines the Republic of Korea's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media and access to information.
- In Section E, CIVICUS examines the Republic of Korea's implementation of UPR recommendations and compliance with international human rights standards related to freedom of peaceful assembly.
- In Section F, CIVICUS makes a number of recommendations to address the concerns listed.

2. (B) Freedom of association

- 2.1** During the Republic of Korea's examination under the 2nd UPR cycle, the government received 1 recommendation on the right to freedom of association and creating an enabling environment for civil society organizations (CSOs). However, as evidenced below, the government did not realize this recommendation.
- 2.2** Article 21 of the Constitution guarantees the right to freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Korea is a state party, also guarantees freedom of association. However, despite these commitments, the government has failed to address a number of unwarranted legal restrictions undermining the full realisation of the right to freedom of association for civil society organisations.²
- 2.3** Article 32 of the Civil Act requires associations and foundations seeking legal personality to receive explicit approval from relevant authorities. Moreover, under this act, the authorities can also deny legal personality to an association or foundation if it is deemed to have operations outside its stated objectives. Such provisions endow the authorities with overbroad and subjective grounds to deny registration to organisations it deems critical of government policy.³
- 2.4** In practice, on several occasions the authorities have invoked the Civil Act to sanction and or silence independent or outspoken civil society groups. For example, LGBTI advocacy group, Beyond the Rainbow Foundation, was denied legal personality by the Ministry of Justice, on questionable grounds that the Ministry was

² Constitution of the Republic of Korea, 29 October 1987.

http://korea.assembly.go.kr/res/low_01_read.jsp?boardid=1000000035

³ Civil Act, English Translation, 2009, <http://www.moleg.go.kr/english/korLawEng?pstSeq=52674>

only authorised to register organisations who work on broader “general human rights” themes.⁴ Moreover, the Ministry of Maritime Affairs and Fisheries rejected the application of civil society group, 4.16 Sewol Families for Truth and A Safer Society, which advocates for accountability of the 2014 Sewol Ferry disaster, spuriously contending that the group’s planned activities, including truth-finding, would duplicate existing activities already being undertaken by the government.⁵

2.5 Article 4 of the Act on Collections and Use of Donations imposes arbitrary and debilitating limitations on access to funding for civil society groups. Under the Act, civil society groups must register all resource mobilisation activities for amounts over 10 million won (approx. 8,340 USD). CSOs that raise more than 10 million won without prior registration can be considered in violation of the Act and subject to sanctions. With worrying frequency, the authorities have rejected applications for registrations under the Act. Among other groups, both the Gangjeong Village and the Miryang Power Towers Opposition Committee have had their application to hold fundraisers rejected. In the case of Gangjeong Village, the Jeju Province, authorities refused to register the group’s application because it believed the donations received would be used to support activities inimical to the government’s policies. Such actions undermine freedom of association.

3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

3.1 Under the Republic of Korea’s previous UPR examination, the government received 2 recommendations on the protection of human rights defenders, journalists and civil society representatives. Of the recommendations received, the government accepted 1 and noted 1. Of these recommendations, the government has partially implemented 1 and not implemented 1.

3.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, the authorities have orchestrated a systemic crackdown on human rights defenders, civil society activists and union representatives to prevent them participating in and organising public demonstrations.

⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Country Report, Republic of South Korea, June 2016, <http://freeassembly.net/reports/republic-of-korea/>

⁵ UN Special Rapporteur on the rights freedom of peaceful assembly and of association, Country Report, Republic of South Korea, June 2016, <http://freeassembly.net/reports/republic-of-korea/>

- 3.3** In April 2015, the 4.16 Sewol Families for Truth and A Safer Society and the Coalition 4.16 on the Sewol Ferry Disaster organised a large public event commemorating the one-year anniversary of the Sewol ferry tragedy, in which 304 people, mostly school students, lost their lives when the Sewol Ferry crashed on 16 April 2014. The Korean Confederation of Trade Unions (KCTU) also actively supported the demonstrations. During the demonstrations, the police deployed bus barricades and indiscriminately used pepper spray while several protestors were arrested and detained on site for using violence against the police and damaging police buses. Most of those arrested were released on probation at the first trial while others remained detained. However, the prosecutor's office later issued an arrest warrant for Mr Sang-gyun Han, President of the KCTU, for helping to organise the demonstration. In July 2016, the Central District Court in Seoul convicted Mr Han Sang-gyun Han to five years in prison for his legitimate activities in helping to organize the demonstrations. He was charged under the following provisions including, causing an injury to a public official (Article 144 of the Criminal Code), obstructing the discharge of duties by a public official (Article 144 of the Criminal Code), the destruction of public goods (Article 141 of the Criminal Code) and obstructing traffic (Article 185 of the Criminal Code). On 12 December 2016, Mr Han Sang-gyun's sentence was reduced to three years in prison on appeal.⁶
- 3.4** Mr Lae-goon Park, member of the civil society organisation 4.16 Coalition of the Sewol Ferry Disaster, a triumvirate alliance comprised of NGOs, Sewol victims' families, and concerned South Korean citizens, was indicted for his role in organising and participating in protests demanding an independent investigation into the tragic Sewol Ferry disaster of 2014. On 22 January 2016, the Seoul District Court sentenced Lae-goon Park to a three-year jail sentence with four years of probation and 160 hours of community service. Among a litany of charges, he was tried for organising illegal rallies, refusing to be dispersed, and obstructing traffic.⁷

4. (D) Freedom of expression and independence of the media

- 4.1** Under the 2nd UPR cycle, the government of the Republic of Korea received 6 recommendations relating to on freedom of expression. Of the recommendations received, 2 were accepted and 4 were noted. However, as discussed below, the government did not take effective measures to implement these recommendations. Of the 6 recommendations pertaining to freedom of expression, the government partially implemented 2 and did not at all implement 4.

⁶ CIVICUS, South Korea: Release protesters and end crackdown on Sewol Ferry demonstrations, 3 June 2015 <http://www.civicus.org/index.php/media-resources/media-releases/2386-south-korea-release-protestors-and-end-crackdown-on-sewol-ferry-demonstrations>

⁷ CIVICUS, Jailing protest leaders undermines South Korean democracy, 27 January 2016, <http://www.civicus.org/index.php/media-resources/news/918-jailing-protest-leaders-undermines-south-korean-democracy>

- 4.2** Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Article 21 of the Constitution of the Republic of Korea guarantees the freedoms of speech and the press with an explicit prohibition on censorship. However, despite the protections, the authorities have continued to discriminatorily apply restrictive legislation, including the National Security Law (NSL), to silence dissenting voices and critics of the government.⁸
- 4.3** In contrast to these constitutional and international standards, the National Security Law, adopted in 1948, criminalises praising or encouraging an “anti-state organization.” The law’s overbroad provisions, which proscribe “Praising or propagating an anti-state organization,” or “Circulating false facts that threaten confusion of social order while a member of an anti-state organization” (Article 7), have frequently been used to stamp out online and offline expression perceived to be sympathetic to North Korea. Contravention of the law can lead to up to seven years in prison.⁹
- 4.4** According to international watch dog groups, authorities filed 129 cases and 57 cases under the National Security Law in 2013 and 2014 respectively. Recently, on 5 January 2017, Lee Jin-young, owner of Labor Books, an online library, was arrested for violating the National Security Law after disseminating publications that purportedly support “anti-government organizations.” Lee Jin-young, 67, has a long history of public activism and has repeatedly been subject to persecution for his activities, including two prior convictions under the NSL twice in the 1980s and 1990s for organizing discussions on political philosophy.

5. (E) Freedom of peaceful assembly

- 5.1** During the Republic of Korea’s examination under the 2nd UPR cycle, the government received 2 recommendations on the right to freedom of assembly. Of the recommendations received, the government noted both. As evidenced below, the government has failed to adequately realize these recommendations. Of the 2 recommendations on freedom of assembly, the government has not implemented either.
- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 21 of the Constitution also guarantees the right to freedom of assembly.¹⁰ However, in stark contrast to these protections, since 2014 the police have shown growing intolerance of the right to freedom of peaceful assembly exemplified by the

⁸ Constitution of the Republic of Korea, 29 October 1987.

http://korea.assembly.go.kr/res/low_01_read.jsp?boardid=1000000035

⁹ National Security Act, (English) <http://www.hartford-hwp.com/archives/55a/205.html>

¹⁰ Constitution of the Republic of Korea, 29 October 1987.

http://korea.assembly.go.kr/res/low_01_read.jsp?boardid=1000000035

authorities increasingly hostile approaches to mass demonstrations, including mass arrests of protesters, judicial harassment of civil society activists and wanton use of force.

- 5.3** We remain particularly concerned by the State's systematic persecution of civil society groups and protesters calling for transparent and independent investigations into the Sewol Ferry tragedy. Since April 2015, tens of thousands of peaceful protestors have held extensive demonstrations across the capital, Seoul, commemorating the one-year anniversary of the Sewol Ferry disaster. The protests, organised by the Coalition 4.16 on the Sewol Ferry Disaster, an alliance of victims' families, individual supporters, and more than 800 South Korean NGOs, have called on the government to establish an independent investigation committee to determine the underlying causes of the incident and the widely criticised rescue effort.¹¹
- 5.4** State security forces have routinely responded to these peaceful protests with disproportionate and excessive force. During protests in Seoul on 16 and 18 April and on 1 May 2015, police used water cannons, teargas and bus barricades to disperse and prevent demonstrators marching toward the President's residence. Over 100 protestors reportedly sustained injuries due to the indiscriminate use of force by police. Further, on a number of occasions during the protests, the police resorted to unwarranted mass arrests to quell the demonstrations. On 18 April 2015, at least 100 protesters, including lawyers, journalists, religious leaders and victims' family members were arrested. Days later on 1 May 2015, 42 people were arrested in similar circumstances.¹²
- 5.5** On 14 November 2015, in the capital, Seoul, over 130,000 people attended a protest to address the government's reluctance to ensure adequate compensation for rice cultivation and production. The demonstration attracted a diverse constituency of union members, farmers, students and urban poor who came together to highlight grievances stemming from concerns about the government's democratic backsliding. In response to the protests, the authorities deployed over 20,000 police officers who proceeded to use excessive and coercive tactics, including water cannons, pepper spray and arbitrary arrest, to disperse the protesters.¹³

¹¹ CIVICUS, South Korea: Release protesters and end crackdown on Sewol Ferry demonstrations, 3 June 2015 <http://www.civicus.org/index.php/media-resources/media-releases/2386-south-korea-release-protestors-and-end-crackdown-on-sewol-ferry-demonstrations>

¹² CIVICUS, South Korea: Release protesters and end crackdown on Sewol Ferry demonstrations, 3 June 2015 <http://www.civicus.org/index.php/media-resources/media-releases/2386-south-korea-release-protestors-and-end-crackdown-on-sewol-ferry-demonstrations>,

¹³ CIVICUS, South Korea: Ensure accountability for death of South Korean activist, 6 October 2016. <http://www.civicus.org/index.php/media-resources/news/829-south-korea-ensure-accountability-for-death-of-south-korean-activist>

5.6 Following the demonstration, over 500 members of the Korean Confederation of Trade Unions (KCTU) were summoned by the police for their role in the November 2015 protests. As examined below, at least 20 KCTU members have been convicted and sentenced from 8-18 months in prison for protesting.¹⁴

5.7 During the demonstration, activist and farmer Mr. Nam-gi Baek was struck by a police-operated water cannon during a mass demonstration. As a direct result of the high-powered blast, Mr Baek suffered a brain haemorrhage and multiple fractures to the skull and eye socket. Mr Baek, who was 68 at the time of the incident, was in a coma for 317 days before succumbing to his injuries in September 2016. Directly following Mr Baek's death, the police blocked all access roads to the hospital, barred people from entering the premises and attempted to seize his body.¹⁵

6. (F) Recommendations to the Government of Republic of Korea

CIVICUS calls on the Government of the Republic of Korea to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

6.1 Regarding freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including through removing legal and policy measures, which unwarrantedly limit the right to association.
- Remove all undue restrictions on the ability of civil society organizations to receive secure funding under the Act on Collections and Use of Donations and

¹⁴ CIVICUS, South Korea: Ensure accountability for death of South Korean activist, 6 October 2016. <http://www.civicus.org/index.php/media-resources/news/829-south-korea-ensure-accountability-for-death-of-south-korean-activist>

¹⁵ CIVICUS, South Korea: Ensure accountability for death of South Korean activist, 6 October 2016. <http://www.civicus.org/index.php/media-resources/news/829-south-korea-ensure-accountability-for-death-of-south-korean-activist>

bring the law in line with best practices articulated by the UN Special Rapporteur on the rights to peaceful assembly and of association.

- All civil society organizations which have been arbitrarily and unduly sanctioned or deregistered should be immediately reinstated.
- Refrain from acts leading to the closure of CSOs or the suspension of their peaceful activities under the Civil Act and instead promote a meaningful political dialogue that allows and embraces diverging views, including those of human rights defenders, CSOs, journalists, political activists and others.
- Specifically, the Civil Act should be suitably amended to guarantee that undue restrictions on freedom of association are removed in line n public gathering to bring their provisions into compliance with article 21 and 22 of ICCPR.

6.2 Regarding the protection of human rights defenders

- Civil society members, journalists and human rights defenders should be provided a safe and secure environment to carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against them and bring perpetrators of such offences to justice.
- Ensure that human rights defenders are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- A consolidated process of repeal or amendment of legislation and decrees which unwarrantedly restrict the legitimate work of human rights defenders in line with the UN Declaration Human Rights Defenders should be initiated.
- Specifically, the Criminal Code should be suitably amended in according with the ICCPR and the UN Declaration on Human Rights Defenders.
- All human rights defenders including, journalists and bloggers detained for exercising their fundamental rights to freedom of expression, association, assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- Senior government officials should publicly condemn instances of harassment and intimidation of civil society activists and organisations.

- The Government should apply systematically legal provisions that promote and protect human rights and establish mechanisms that protect human rights defenders by adopting a specific law on the protection of human rights defenders in accordance with Council resolution 27.31 of the Human Rights Council

6.3 Regarding freedom of expression, independence of the media and access to information

- Ensure freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Specifically review the National Security Law in order to ensure that it is in line with the best practices and international standards in the area of freedom of expression.
- Reform defamation legislation in conformity with article 19 of the International Covenant on Civil and Political Rights (ICCPR).
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the Government may find sensitive.
- Take adequate steps to lift restrictions on freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Refrain from censoring social and conventional media and ensure that freedom of expression is safeguarded in all forms

6.4 Regarding freedom of assembly

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which calls for simple notification rather than explicit permission to assemble.
- All demonstrators, journalists and human rights defenders detained for exercising their right to freedom of peaceful assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.

- All instances of extra-judicial killing and excessive force committed by security forces while monitoring protests and demonstrations should be immediately and impartially investigated.
- Review and if necessary update existing human rights training for police and security forces with the assistance of independent nongovernmental organizations to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Senior government officials should publically condemn the use of excessive and brutal force by security forces in the dispersal of protests. A formal investigation into such instances should be launched, and perpetrators should be brought to justice.
- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities.

6.5 Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with civil society organizations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.
- Include civil society organizations in the UPR process before finalizing and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society stakeholders.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

Assessment of implementation of civic space recommendations:

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>124.56. Review regularly the application of the National Security Act, to ensure its consistency with human rights principles (Australia); Specify modalities for the implementation of the National Security Law so that this law cannot be used against freedoms of expression, association and peaceful assembly (France);</p> <p>Source of position: A/HRC/22/10/Add.1 - Para. 31</p>	Noted	<p>A41 Constitutional and legislative framework D43 Freedom of opinion and expression D45 Freedom of association A42 Institutions & policies - General D44 Right to peaceful assembly A12 Acceptance of international norms</p> <p>Affected persons: - general</p>	Not implemented
<p>124.36. Consider establishing mechanisms preventing security forces from using force in an excessive or unjustified manner, especially against peaceful protesters (Poland);</p> <p>Source of position: A/HRC/22/10/Add.1 - Para. 27</p>	Noted	<p>D31 Liberty and security - general D44 Right to peaceful assembly D25 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>Affected persons: - general</p>	Not implemented

<p>124.57. Define more clearly the regulations of the National Security Law (Germany); Consider amending the National Security Law to prevent arbitrary application and abusive interpretation of the law (Norway); Amend the National Security Law to guarantee that its application respects fully the freedom of expression (Spain); Amend the National Security Law to provide clarity and prevent abusive interpretations of the law (United States of America); Abolish the criminal laws as the “National Security Law” (Democratic People’s Republic of Korea); Source of position: A/HRC/22/10/Add.1 - Para. 31</p>	Noted	<p>D4 Fundamental freedoms D43 Freedom of opinion and expression A41 Constitutional and legislative framework Affected persons: - general - persons deprived of their liberty</p>	Not implemented
<p>124.50. Take further actions to ensure freedom of expression on the Internet, including opinions which are different from the positions of the Government (Japan); Ensure full implementation of international human rights obligations regarding freedom of expression (Poland); Ensure that laws on freedom of expression and freedom of the press are applied in conformity with international standards (Switzerland); Source of position: A/HRC/22/10/Add.1 - Para. 26</p>	Supported	<p>D43 Freedom of opinion and expression A12 Acceptance of international norms Affected persons: - general - media</p>	Not implemented

<p>124.51. Adopt specific legislation to guarantee the exercise of the rights to freedom of opinion and expression (South Africa); Source of position: A/HRC/22/10/Add.1 - Para. 28</p>	<p>Noted</p>	<p>D43 Freedom of opinion and expression A41 Constitutional and legislative framework Affected persons: - general</p>	<p>Partially implemented</p>
<p>124.54. Provide training to law enforcement officers on proper enforcement of the National Security Law to avoid investigations, detentions, and charges that restrict freedom of expression and result in a climate of self-censorship (United States of America); Source of position: A/HRC/22/10/Add.1 - Para. 26</p>	<p>Supported</p>	<p>D43 Freedom of opinion and expression B51 Right to an effective remedy A53 Professional training in human rights D26 Conditions of detention Affected persons: - general - persons deprived of their liberty - law enforcement / police officials</p>	<p>Partially implemented</p>
<p>124.55. Release all persons including pro-reunification patriots who were unjustly arrested and imprisoned according to the “National Security Law” (Democratic People's Republic of Korea); Source of position: A/HRC/22/10/Add.1 - Para. 31</p>	<p>Noted</p>	<p>D31 Liberty and security - general D43 Freedom of opinion and expression Affected persons: - persons deprived of their liberty</p>	<p>Not implemented</p>