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And

Human Rights Defenders Alert – India

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CIVICUS: World Alliance for Citizen Participation

CIVICUS UPR Lead, Mr. David Kode,

Email: david.kode@civicus.org

Ms Renate Bloem,

Email: renate.bloem@civicus.org

Tel: +41 22 733 3435

Web: www.civicus.org

Partner Organisations UPR Lead

Human Rights Defenders Alert - India

Mr. Henri Tiphagne, Email: henri@pwtm.org

Tel: +91-452-2539520

Web: www.hrdaindia.org

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** Human Rights Defenders Alert (HRDA) – India is a national platform of human rights defenders for human rights defenders in India. Founded in 2010, it has more than 1500 individuals and organisations as members. HRDA initiates urgent action for the protection of human rights defenders under threat and attack.
- 1.3** In this document, CIVICUS and HRDA examine the Government of India’s compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse India’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 on 24 May 2012. To this end, we assess India’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 to the State under Review.
- 1.4** During the 2nd UPR cycle, India received a total of 202 recommendations. Of these recommendations, 61 were accepted and 141 were noted. An evaluation of a range of legal sources and human rights documentation demonstrate that the Government of India has not fully implemented most of the recommendations it accepted and noted in relation to the above mentioned rights/ civic space.
- 1.5** CIVICUS and HRDA are deeply concerned about unwarranted restrictions on civil society groups, the use of restrictive legislation to de-register organisations and the suspension of the bank accounts of others to prevent them from carrying out their activities. We are alarmed by the attacks, intimidation and judicial persecution of human rights defenders particularly those who challenge actions of the government and call for accountability. We are equally concerned about the brutal assassination of journalists and often violent dispersal of peaceful demonstrations.
 - In Section B, CIVICUS and HRDA examine India’s implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
 - In Section C, CIVICUS and HRDA examine India’s implementation of UPR recommendations and compliance with international human rights standards related to the protection of human rights defenders and civil society activists.
 - In Section D, CIVICUS and HRDA examine India’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, protection of journalists and independence of the media.
 - In Section E, CIVICUS and HRDA examine India’s implementation of UPR recommendations and compliance with international human rights standards related to freedom of assembly.
 - In Section F, CIVICUS and HRDA make a number of recommendations to address the concerns listed.

2. (B) Freedom of association

- 2.1 During India's examination under the 2nd UPR cycle at the 21st Session of the Human Rights Council, the government received four recommendations related to the right to freedom of association and creating an enabling environment for civil society organisations. Of the recommendations received, the government accepted one and noted three. These include commitments to cooperate with Special Procedures (proposed by Czech Republic) and to eliminate discrimination against and empower marginalised and vulnerable groups (proposed by Thailand). However, as evidenced below, the government has failed to take adequate measures to realise these recommendations. Of the four recommendations on freedom of association, the government has partially implemented two.
- 2.2 Article 19 (c) of the Indian Constitution guarantees the right to form associations and unions.¹ Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party, also guarantees freedom of association. However, despite these commitments, the government has since 2012 used restrictive legislation and policies to target civil society organisations, suspended the operations of some and cancelled the registration of others. The Indian authorities have on several occasions frozen the bank accounts of organisations thereby preventing them from accessing funding to carry out their operations.
- 2.3 The Foreign Contributions Regulations Act 2010 (FCRA) effectively replaced the Foreign Contribution (Regulation) Act 1976. The FCRA states that an organisation can be deemed political if it has objectives of a political nature or makes comments that are political or participates in a political activity. The government has used such broad terms to subjectively target organisations that question government policies. In addition, the Act forces NGOs to use designated bank accounts and keep separate books of accounts when receiving and disbursing foreign funds.² It empowers an inspecting officer to seize the FCRA account of an organisation, if the said organisation violated any provision of the FCRA. In December 2015, the Ministry of Home Affairs published amendments to the FCRA. The amendments increased the reporting requirements of NGOs and made it compulsory for all applications for the registration of NGOs to be made online.³ Prior to the amendments, the FCRA required only organisations receiving more than 10 million Rupees (approximately US \$ 150,000) to publicly release details of the funds received and how they were used for the year received and year after. Under the amended FCRA, all organisations that receive funding from foreign sources must publish detailed annual audited statements of what the funds were used for on its official website or website specified by the central government.⁴
- 2.4 On 1 June 2016, the Ministry of Home Affairs (MHA) suspended the registration of the human rights organisation Lawyers Collective (LC) for a period of 6 months for violating the FCRA.⁵ The authorities accused LC of authorising reimbursements to two of its founding members - Indira Jaising and Anand Grover. LC was also accused of "spending

¹ Constitution of India, https://drive.google.com/file/d/0B7GU6nn_-IG7c2JQXVNY3RDdQ/view, accessed 10 June 2016.

² "The Foreign Contribution (Regulation) Act 2010, No 42 of 2010," [http://lawmin.nic.in/ld/regionallanguages/THE%20FOREIGN%20CONTRIBUTION%20\(REGULATION\)%20ACT.2010.%20\(42%20OF%202010\).pdf](http://lawmin.nic.in/ld/regionallanguages/THE%20FOREIGN%20CONTRIBUTION%20(REGULATION)%20ACT.2010.%20(42%20OF%202010).pdf), accessed 11 July 2010.

³ "Government of India, Ministry of Home Affairs," https://fcraonline.nic.in/home/PDF_Doc/doc00600120151214130739.pdf, accessed 11 July 2016.

⁴ Government of India, Ministry of Home Affairs," https://fcraonline.nic.in/home/PDF_Doc/doc00600120151214130739.pdf, accessed 11 July 2016.

⁵ "Indira Jaising's NGO Lawyers Collective suspended for 6 months," *Hindustan Times*, <http://www.hindustantimes.com/india-news/govt-hits-out-at-indira-jaising-suspends-fcra-registration-of-her-ngo/story-IBGB8qHU6nKmnthuQ8fn7M.html>, accessed 13 June, 2016.

foreign contributions on advocacy with media and members of parliament.⁶ LC was given a month to provide an explanation why its registration should not be permanently cancelled. LC was created in 1981 and has over the years engaged in human rights advocacy, legal aid and litigation.

- 2.5 Between 5 May and 9 June 2015, the Home Ministry cancelled the registration of 4470 NGOs for violating the FCRA.⁷ The authorities accused the affected NGOs of failing to submit their tax returns. This was preceded by the cancellation of the licenses of 9000 NGOs in April 2016 for violation of the FCRA. These moves have created an uncertain and disabling environment for CSOs to operate in India.
- 2.6 On 23 April 2015, the US-based Ford Foundation was included on an official “watch list” by the Indian authorities. The implications were that funds from the Ford Foundation could not be released to beneficiaries in India without the approval of the Home Ministry.⁸ The actions were linked to Ford’s support to a Trust headed by human rights activist Teesta Setalvad (see 3.9 below) that advocates for the rights of riot victims in Gujarat, where Prime Minister Modi was Chief Minister.⁹ On 16 March 2016, ahead of Prime Minister Modi’s visit to the US, the Home Office ordered the removal of Ford Foundation from the “watch list.” Ford complied with the government’s requirement and registered under the Foreign Exchange Management Act (FEMA) 1999. In general, the government’s regulatory regime for civil society organisations is disproportionate, and is also discriminatory compared to that of the corporate sector.¹⁰
- 2.7 On 9 April 2015, the Minister of Home Affairs instituted an order to freeze the bank accounts of Greenpeace India to prevent the organisation from receiving funds from abroad. The Indian government accused Greenpeace which sought to protect the environment and the rights of local communities of engaging in activities that were against the country’s economic interests, threatening national security and for inciting protests. It accused Greenpeace India of incurring 50% of foreign donations on administrative costs between 2011-2013 without prior approval. On 27 May 2015, the Delhi High Court granted Greenpeace a temporary relief by ordering release of some of its funds. There are strong reasons to believe that Greenpeace India is being persecuted for its expressions of democratic dissent against government policies.

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

- 3.1 Under India’s previous UPR examination, the government received 4 recommendations on the protection of human rights defenders and civil society representatives and noted all four. These include a commitment to take measures to investigate human rights violations in a timely and effective manner (proposed by Spain and Norway) and to solve remaining cases of human rights violations (proposed by Iraq). However, as examined in this section, the government has failed to effectively operationalise these recommendations. Of the four

⁶ Layers Collective (LC)’s response to FCRA suspension order, <http://www.lawyerscollective.org/wp-content/uploads/2016/06/LC-Response-to-FCRA-suspension-02-06-2016.pdf>, accessed 13 June, 2016.

⁷ “In a fresh crackdown, government cancels licenses of 4470 NGOs, *Indian Defence News*, <http://www.indiandefensenews.in/2015/06/in-fresh-crackdown-govt-cancels.html>, accessed 11 August 2016.

⁸ Government puts curbs on Ford Foundation funding , puts it on watch list,” *Hindustan Times*, 24 April 2015, <http://www.hindustantimes.com/india/govt-puts-curbs-on-ford-foundation-funding-puts-it-on-watch-list/story-OJCwwEL4jD02GzGmAueOYJ.html>, accessed 10 June, 2016.

⁹ “Ford Foundation taken off watch list.” <http://www.thehindu.com/news/national/ford-foundation-taken-off-watch-list/article8366862.ece>, accessed 11 July 2016.

¹⁰ “ANALYSIS ON INTERNATIONAL LAW, STANDARDS AND PRINCIPLES,” <http://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteIndia.pdf> accessed on 15 September 2016.

recommendations noted on protection of HRDs, the government has not fully implemented any of them.

- 3.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection of human rights defenders. The ICCPR further guarantees the freedoms of expression, association and peaceful assembly. In addition, there are several reports of the National Human Rights Commission (NHRC) failing to investigate and act on cases brought to it by civil society organisations. The focal point on HRDs at the Commission has no specific powers to act on cases involving HRDs. Instead, all complaints are examined by the Chairperson and members of the NHRC. Despite the fact that 225 cases were filed before the NHRC by HRDA since January 2015, none of the cases were looked into.¹¹ The situation of HRDs in India is exacerbated by the fact that the country doesn't have a HRD protection law. The government has failed to implement in letter and spirit, a UN General Assembly Resolution on Human Rights Defenders.
- 3.3 On 30 June 2016, Roma Malik, National Secretary, New Trade Union Initiative (NTUI), Deputy General Secretary of the All India Union of Forest Working People (AIUFWP) and Sukalo Gond, Executive Committee, AIUFWP were arrested and interned at the Mirzapur jail. Many activists were arrested together with them from the AIUFWP office in Robertsganj (District Sonbhadra, UP) while preparing for a public meeting of the All India Peoples' Forum (AIPF). The other activists were released later in the day. All arrests, by the police, and the remand, by the Sonbhadra Court, of Roma and Sokalo are erroneously based on three First Information Reports (FIR) in which no individual has been named.¹²
- 3.4 On 26 April 2016, Lama Lobsang Gyatso, General Secretary of the Save Mon Region Federation, a group consisting of monks opposed to construction of up to 7000 MW hydro power in Tawang, Arunachal Pradesh, was arrested for allegedly leading a group of people from Gongkhar village where the Mukto Shakangchu 6 MW project is coming up. He was arrested based on FIR filed by the personal security officer of local MLA Pema Khandu for disruption of peace.¹³
- 3.5 On 20 February 2016, human rights defender Soni Sori was attacked by unidentified assailants on her way from Jagdalpur to her home in Geedam in Chhattisgarh state. Her attackers threw a chemical substance at her and she was admitted to hospital.¹⁴ At the time of the attack, she was working on a case of extra-judicial killings in which the police were implicated. During the attack, her assailants threatened her they will attack again if she continued working on the case.¹⁵ She advocates for the land rights of indigenous people in Chhattisgarh and focuses on women's rights. Following the attack, her relatives

¹¹ As per the report submitted by AiNNI to GANHRI SCA review of NHRC India review in November 2016 and AiNNI's submission to Asian NGO Network on National Human Rights Institutions (ANNI). Only 74 cases out of 104 cases filed by HRDA were registered by the NHRC. All these cases were directly filed with the Focal Point on HRD at the NHRC. 7 more cases were registered out of these 104 cases, not HRDA as complainant but HRDA members who have also filed the same complaint circulated by HRDA. 23 cases were not registered by the NHRC. In no case, there has been any compensation or persecution recommended by the NHRC till date.

¹² HRDA petition to NHRC - <http://hrdaindia.org/wp-content/uploads/2015/07/2015-07-14-HRDA-North-UP-Sonbhadra-Dist-UA-Ms.Roma-another-WHRD-.pdf> accessed 14 September 2016.

¹³ HRDA petition to NHRC - <http://hrdaindia.org/wp-content/uploads/2016/05/2016-05-10-HRDA-UA-NORTH-EAST-Lama-Lobsang.pdf> accessed 15 September 2016.

¹⁴ "Soni Sori moved to Delhi, fearing for her children," *The Indian Express*, <http://indianexpress.com/article/india/india-news-india/soni-sori-moved-to-delhi-fears-for-her-children/>, accessed 11 August 2016.

¹⁵ Chhattisgarh must investigate attack on Soni Sori ensure safety of her family: Amnesty," *The Times of India*, <http://timesofindia.indiatimes.com/india/Chhattisgarh-must-investigate-attack-on-Soni-Sori-ensure-safety-of-her-family-Amnesty/articleshow/51090543.cms>, accessed 10 June 2016.

were targeted on 10 March 2016.¹⁶ Several other activists in Chhattisgarh are reported to have been routinely targeted. On 18 February 2016, in the case of Jagdalpur Legal Aid Group, a group of young women lawyers providing pro-bono legal aid, were barred from practice and evicted from Jagdalpur.¹⁷

- 3.6 On 22 September 2015, human rights defender Ajimuddin Sarkar was arbitrarily arrested and detained at the Islampur Police Station in West Bengal where he was physically assaulted. Ajimuddin is a human rights monitor for the Banglar Manabadhikar Mancha (MASUM). He was previously arrested on 21 November 2014 at his home and released on bail on 8 December 2015. MASUM is a human rights organisation that monitors incidents of torture and lobbies and advocates for the respect, promotion and protection of human rights.
- 3.7 A disturbing new trend witnessed the targeting of HRDs making use of the Right to Information Act.¹⁸ On 10 August 2015, human rights defender and Right to Information (RTI) Activist Jawahar Lal Tiwary was kidnapped in Muzaffarpur in Bihar state and his mutilated body was discovered four days later.¹⁹ He was brutally assassinated because of his campaigns for accountability for funds that were disbursed for victims of floods in Bihar in 2012. Again on 5 April 2015, another activist Laxman Thakur was threatened by members of the village council for submitting a Right to Information application to the Pavel Forest Department's Office under the Right to Information Act. Laxman's submission had requested details on forest land in his community.²⁰
- 3.8 On 11 January 2015, the Indian authorities prevented Green Peace International Campaigner Priya Pillai from travelling to the UK. She had an appointment to speak to members of parliament in the UK about the impact of a coal mine in Madhya Pradesh on the environment and communities. Immigration officers did not provide any valid reasons why she was not allowed to board the flight even though her travel documents were in order.²¹ The Delhi High Court ruled in March 2015 that the action of the authorities violated her rights.²² The court ruled that the government should remove the "off load" tag on her passport and take her name off a state-data base. On 16 September 2014, Dr. SP Udaykumar, leading the anti-nuclear movement in Kudankulam, was barred at the Delhi Airport from visiting Nepal to attend a consultation on restrictions on human rights.²³ On 14

¹⁶ "Human Rights Defenders Alert, India," <http://hrdindia.org/wp-content/uploads/2016/03/2016-03-14-HRDA-MEMORANDUM-CHHATTISGARH-Ms.Soni-SorisRelatives-and-Friends.pdf>, accessed 10 June 2016.

¹⁷ "Chhattisgarh Police Direct Owners to Evict Jagdalpur Legal Aid Group, Journalists" <http://indianexpress.com/article/india/india-news-india/chhattisgarh-police-direct-owners-to-evict-jagdalpur-legal-aid-group-journalist-of-accommodation/> accessed 12 September 2016.

¹⁸ Data compiled by the Commonwealth Human Rights Initiative shows that Maharashtra has recorded the highest number of attacks 60 on RTI activists since the law was passed a decade ago, followed by Gujarat (36), UP (25) and Delhi (23). When it comes to murders, Gujarat and UP come second with 6 each, followed by Karnataka and Bihar with 4 murders each. When it comes to a count of activists attacked, killed or harassed, Gujarat comes second with 36, followed by UP at 25 and Delhi at 23. Available at <http://timesofindia.indiatimes.com/india/Maharashtra-most-unsafe-for-RTI-activists-10-killed-in-10-years/articleshow/48840985.cms>

¹⁹ Human Rights Defenders alert-India, <http://hrdindia.org/wp-content/uploads/2015/08/2015-08-28-HRDA-UA-East-Bihar-Jawahara-Lal-Tiwary.pdf>, accessed 10 June 2016.

²⁰ Human Rights Defenders Alert – India, <http://hrdindia.org/wp-content/uploads/2015/05/2015-05-18-HRDA-UA-South-Maharashtra-Laxman.pdf>, accessed 10 June 2016.

²¹ "Green Peace campaigner Priya Pillai offloaded at airport," *The Hindu*, <http://www.thehindu.com/news/national/greenpeace-campaigner-priya-pillai-offloaded-at-airport/article6777773.ece>, accessed 10 June 2016.

²² "High Court rules in favour of Greenpeace Pillai: state cannot muzzle dissent," <http://indianexpress.com/article/india/high-court-quashes-look-out-circular-against-greenpeace-activist-priya-pillai/>, accessed 11 July 2016.

²³ "Udaykumar Stopped from Flying to Nepal," <http://www.thehindu.com/news/national/tamil-nadu/udayakumar-stopped-from-flying-to-nepal/article6418652.ece> accessed 13 September 2016

September 2016, Mr. Khurram Parvez, a Kashmiri activist, was barred at the Delhi Airport from attending a session of UN Human Rights Council.²⁴

3.9 Since March 2013, human rights defender Teesta Setalvad has been subjected to judicial persecution, harassment and intimidation for her human rights activities. Teesta Seetalvad and her family have been targeted for assisting victims of communal violence in Gujarat and for calling for Prime Minister Narendra Modi and other government officials and security officers to be held accountable for the killings of hundreds of citizens during the violence.²⁵ As a means to intimidate, Teesta Seetalvad and her husband Javed Anand have been under investigation by the authorities for fraud, breach of trust and criminal conspiracy and for receiving foreign funds through her NGO – Sabrang Trust to create communal disharmony in Gujarat.²⁶

4 (D) Freedom of expression, independence of the media and attacks on journalists

4.1 Under the 2nd UPR cycle, the Indian government received two recommendations relating to freedom of expression, independence of the media and the protection of journalists and noted both. The government pledged to ensure a safe working environment for journalists, and to take measures to address impunity and carry out swift and independent investigations (proposed by Austria). However, as discussed below, the government has not implemented all these recommendations.

4.2 Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Article 19 (1a) of the Constitution of India also guarantees the right to freedom of expression. It states that “all citizens have the right to freedom of speech and expression.”²⁷ However, in policy and practice, the Indian authorities continue to use restrictive legislation to prosecute journalists and media agencies, human rights activists, writers and artists. Several journalists have also been brutally assassinated and others physically attacked, intimidated and harassed for carrying out their professional responsibilities, exposing corruption and human rights violations.

4.3 The Indian authorities have used restrictive provisions of the Indian Penal Code (IPC) (1860) which was drafted during British colonial rule to curb freedom of expression. Section 499 of the IPC criminalises defamation. It defines defamation as the utterance or publication of information with the intention to harm the reputation of a person, company or an association. It states that “whoever by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any information concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person is said, except in cases hereinafter excepted, to defame the person.”²⁸ Section 500 proposes a fine and two-year imprisonment sentence to those found guilty of defamation. It is frequently misused by individuals, politicians, business persons and corporations to target journalists who write critical investigative articles about them. In addition, IPC provisions on the broadly defined offence of sedition

²⁴ “J&K Police arrests human rights activist Khurram Parvez,” <http://indianexpress.com/article/india/india-news-india/khurram-parvez-kashmiri-human-right-activist-detained-delhi-airport-arrest-3033451/> accessed 15 September 2016.

²⁵ “India: fresh investigations against human rights defender Ms Teesta Setalvad,” AWID, <http://www.awid.org/get-involved/india-fresh-investigation-brought-against-human-rights-defender-ms-teesta-setalvad>, accessed, 11 August 2016.

²⁶ “SC extends arrest shield for Teesta Setalvad, husband by 4 weeks,” *Indian Express*, <http://indianexpress.com/article/india/india-others/sc-extends-arrest-shield-for-teesta-setalvad-husband-by-4-weeks/>, accessed 11 August 2016.

²⁷ “The Constitution of India,” <http://lawmin.nic.in/coi/coiason29july08.pdf>, accessed 22 July 2016.

²⁸ “The Indian Penal Code 1860, Act 45 of 1860, 6 October 1860,” <http://new.nic.in/acts/THEINDIANPENALCODE1860.pdf>, accessed 13 June 2016.

which continues from colonial times is frequently used to target freedom of expression and those found guilty of seditious acts can be imprisoned from 3 years to life and fined”²⁹

- 4.4 On 14 May 2016, journalist Pushp Sharma of the *Milli Gazette*, an English language bi-weekly publication was arrested by security forces in Delhi and accused of faking a document used to publish an article on 11 March 2016, in which he accused the government of discriminating against Muslims.³⁰ The article titled “We Don’t Recruit Muslims: Modi government’s AYUSH Ministry,” published in the *Milli Gazette* accused the government of not recruiting Muslims for foreign missions.³¹ The authorities accused Pushp of attempting to “bring disharmony and mistrust” and for “forgery with the purpose cheating.” He was charged under the IPC and sent to two days judicial custody in a prison in Tihar.
- 4.5 On 13 May 2016, unidentified gunmen shot and killed journalist Rajdev Ranjan who at the time was the Bureau Head of the *Hindustan* newspaper in Siwan in the state of Bihar.³² His colleagues noted that he had left the office after receiving a call. He had received death threats before he was assassinated and his family noted that he was targeted for his critical reporting. A day before, on 12 May 2016, another journalist Indradev Yadav also known as Akhilesh Yadav was assassinated by unidentified individuals as he returned to his home in Sadar market area in Chatra district of Jharkhand state.³³ He worked as a correspondent for Taaza TV – a Hindi news channel based in Kolkota, West Bengal.
- 4.6 On 21 March 2016, police arrested journalist Prabhat Singh, a reporter from the Hindi daily newspaper *Patrika* after he posted messages on the social media app whatsapp in which he criticised the police and called for a law that protects reporters in the Bastar region of Chhattisgarh state. He was charged with publishing an insulting message under the Information and Technology Act.³⁴ He was physically assaulted while in custody. On 26 March 2016, police arrested journalist Deepak Jaiswal, a reporter from the Hindi daily newspaper *Dainaddini* in Bastar, Chhattisgarh state. He was arrested for a case against him and Prabhat Singh which was filed seven months ago by the principal of a school in Geedam. The case was in relation to a report written by Deepak and Prabhat in which they accused teachers in the school in Geedam of being complicit in exam malpractices with students.³⁵
- 4.7 On 3 October 2015, journalist Hemant Yadav, a reporter for TV 24 was shot dead close to his home in Chandauli district in Uttar Pradesh.³⁶ His attackers fled the scene after he was shot. Before that, on 18 June 2015, journalist Prasanta Kumar, a correspondent for the Assamese paper *Asamiya Pratidin* was shot by unidentified individuals on his way home.

²⁹ “The Indian Penal Code 1860, Act 45 of 1860, 6 October 1860,”

<http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf>, accessed 13 June 2016.

³⁰ “Journalist Pushp Sharma arrested over fake RTI query,” *The Times of India*, <http://timesofindia.indiatimes.com/city/delhi/Journalist-Pushp-Sharma-arrested-over-fake-RTI-query/articleshow/52268768.cms>, accessed 12 July 2016.

³¹ “Reporter who said AYUSH denied jobs to Muslims held for forgery,” *The Indian Express*, <http://indianexpress.com/article/india/india-news-india/ayush-ministry-case-journalist-pushp-sharma-arrested-over-fake-rti-query-2800655/>, accessed 12 July 2016.

³² “Journalist Kajdev Ranjan shot dead in Bihar,” *The Indian Express* <http://indianexpress.com/article/india/india-news-india/bihar-journalist-rajdev-ranjan-shot-dead-siwan-2799308/>, accessed 12 July 2016.

³³ “Journalist shot dead in Jharkhand, CM Raghubar Das condemns incident,” *The Indian Express* <http://indianexpress.com/article/india/india-news-india/journalist-akhilesh-pratap-singh-shot-dead-in-jharkhand-2798835/>, accessed 12 July 2016.

³⁴ “Chhattisgarh journalist arrested for whatsapp post, accuses cops of torture,” NDTV, <http://www.ndtv.com/india-news/chhattisgarh-journalist-arrested-for-sharing-whatsapp-message-on-cop-1289971>, accessed 14 July 2016.

³⁵ “In Chhattisgarh, journalist held from outside court” *The Indian Express*, <http://indianexpress.com/article/india/india-news-india/chhattisgarh-journalist-arrest-from-outside-court/>, accessed 17 July 2016.

³⁶ “Journalist shot dead in Uttar Pradesh, third incident in four months,” NDTV <http://www.ndtv.com/india-news/journalist-shot-dead-in-uttar-pradesh-third-incident-in-4-months-1226081>, accessed 12 August 2016.

His assailants blindfolded him after he was shot and forced him into a car before pushing him out.³⁷ He went to a police station after the attack and was rushed to hospital.

5 (E) Freedom of peaceful assembly

- 5.1** During India's examination under the 2nd UPR cycle, the government received five recommendations related to the right to freedom of peaceful assembly, of which two were accepted and three noted. The government committed to ensuring that it will extend a standing invitation to Special Procedures (proposed by Switzerland) and improve training on human rights by addressing law enforcement, especially police officers. Despite these commitments made the government has failed to adequately implement them.
- 5.2** Section 144 of the Code of Criminal Procedure which empowers executive authorities to issue orders requiring individuals to abstain from committing certain acts is routinely invoked to arbitrarily prevent peaceful public gatherings on the pretext of maintaining law and order and to stifle people's movements.³⁸ The Code of Criminal Procedure also provides the authorities with broad powers to impose curfews in cases where immediate prevention or speedy remedy is required.³⁹
- 5.3** In April 2015, peaceful protests organised by the Kanhar Bandh Virodhi Sangharsh Samiti (KBVSS) and the All Indian Union of Forest Working People (AIUFWP) were forcefully dispersed by security forces at the site of the construction of Kanhar dam in the Sonbhadra district of Uttar Pradesh. The demonstrators were protesting against the acquisition of land for the construction of the Kanhar dam. At least eight protesters were seriously injured and 35 others suffered from minor injuries. In addition, the authorities have often used excessive force in dealing with anti-government protests, especially in conflict-affected areas such as Jammu and Kashmir.⁴⁰ Over 80 people have died in protests and clashes with security forces in the state between July and September of 2016.⁴¹
- 5.4** On 13 June 2013, the Indian authorities arrested Anuradha Kapoor and 12 women human rights defenders as they attempted to hand a memorandum denouncing the rape of two students at Barasat and Krishnagani, Nadia West Bengal. They had assembled at the residence of the Chief Minister of the government of West Bengal and carried placards denouncing the rape before they were arrested by security officers. They were accused of violating the Criminal Procedure Code. They were released on a bond the same day but refused access to lawyers for the entire duration of their detention. All those arrested are members of the *Maitree*, a women's network based in Kolkata, West Bengal.

³⁷ "Prasanta Kumar attack: it's a tough life for reporters in Assam," *Hindustan Times*, <http://www.hindustantimes.com/india/prasanta-kumar-attack-it-s-a-tough-life-for-reporters-in-assam/story-GOMCAkaAvvHXFKvuxm44WK.html>, accessed 12 August 2016.

³⁸ Full text of section 144. Dissent is often criminalized, for instance the authorities imposed section 144 at the Mapithel dam site in Manipur to prevent protests by affected communities. Data from BPRD shows another instance of increasing criminalization of peaceful protesters. 10,353 people were arrested for participation in agrarian protests in 2015 as compared to 3,500 in 2014. Increasingly, public spaces are off limits for peaceful protests because of frequent and over-broad use of laws such as section 144.

³⁹ "The Code of Criminal Procedure 1973, Act no 2 of 1974," <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>, accessed 25 July 2016.

⁴⁰ State response to end violent street protests in Kashmir which began in July 2016 led to over 70 protesters being killed and hundreds more injured. The federal paramilitary unit, Central Reserve Police Force, told the Jammu and Kashmir High Court that it had used 1.3 million pellets in 32 days, admitting that "it was difficult to follow the standard operating procedure given the nature of the protests." Indian security forces have been using pellet guns as a nonlethal option for crowd control since 2010 in Kashmir. Use of pellet guns to control protesting crowds in 2016 led to 10 deaths and caused blindness or serious eye injuries to over 100 people.

⁴¹ <http://www.tribuneindia.com/news/jammu-kashmir/feeble-traffic-on-roads-as-police-see-improvement/298331.html>

6 (F) Recommendations to the Government of India

CIVICUS and HRDA call on the Government of India 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.
- Repeal or comprehensively amend the FCRA particularly sections that restrict the ability of civil society organisations from receiving funding from foreign sources and the cumbersome reporting and administrative requirements for civil society organisations.
- Stop the practice of suspending bank accounts, and freezing funds of civil society organisations that work on issues that challenge the government.
- Desist from arbitrarily cancelling the registration of civil society organisations and those that have been unduly sanctioned or deregistered should be immediately reinstated.
- Refrain from acts leading to the closure of CSOs or the suspension of their peaceful activities, 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.

7.1 Regarding the protection of human rights defenders

- Civil society members 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 offenses to justice.
- Stop the intimidation harassment and judicial persecution of human rights activists and desist from imposing travel bans on those who intend to engage with the international community on India's human rights commitments.
- All human rights defenders detained for exercising their right to fundamental rights to freedom of expression, association, assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- The Government should systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect human rights activists

by adopting a specific law on the protection of human rights defenders in accordance with Council resolution 27.31 of the Human Rights Council.

- In all complaints submitted to the Focal Point on HRDs at the NHRC dealing with special reference to W/HRDs, the NHRC should undertake independent investigation using the services of its Special Rapporteurs, members of NHRC NGO Core Group and Special Investigation teams appointed from time to time.
- The NHRC should ensure that its Focal Point on HRDs should be a member of the Commission, with a dedicated team and have a HRD background to fully understand the challenges faced by defenders as recommended by the UN Special Rapporteur on the protection of human rights defenders in her report of March 2012 after the 2011 country visit which included a visit to the NHRC as well.
- NHRC should lead the process of developing a comprehensive, adequately resourced, well-advertised national and state protection programme for HRDs at the central and state levels and in conjunction with the state human rights commissions and other statutory bodies mandated to protect human rights.
- The NHRC should intervene in courts using its powers under Section 12 (b) of the Protection of Human Rights Act in instances of fabricated cases against HRDs. The NHRC should undertake independent investigations and based on its investigations should intervene in these courts through competent senior practicing lawyers.

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

- Thoroughly review and amend the antiquated colonial era Indian Penal Code (particularly Sections 499 and 124 A) and the Information and Technology Act (2000) to ensure that they are in line with the best practices and international standards in the area of freedom of expression.
- Take appropriate steps to protect journalists, particularly those who complain about threats to their lives and carry out independent investigations in all cases where journalists have been assassinated with a view to bringing the perpetrators to justice.
- 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, including the arts.

7.3 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 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.
- 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.
- Ensure that security forces abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁴² Force should not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law.⁴³

7.4 Regarding access to UN Special Procedures mandate holders

- The government should respond to a request for a visit by the Special Rapporteur on the Rights to Freedom of peaceful Assembly and Association (submitted 26 September 2014.) In addition, the government should prioritise official visits with the: 1) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 2) Special Rapporteur on the Independence of Judges and Lawyers; 3) Special Rapporteur on extrajudicial, summary or arbitrary executions; 4) Working Group on Arbitrary Detention.

7.5 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.
- 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 actors.
- Incorporate the results of this UPR into its 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.

⁴² Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
<http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>

⁴³ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, February 2016,
http://freeassembly.net/wpcontent/uploads/2016/02/A.HRC_.31.66_E_with_addendum.pdf

Annex 1 - Thematic list of recommendations – Civic Space

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
Right or area: 3.1. Cooperation with treaty bodies			
138.65. Implement Treaty Body recommendations and develop a National Action Plan to eliminate all forms of discrimination (Slovenia); Source of position: A/HRC/21/10 - Para. 138	Noted	3.1 Cooperation with treaty bodies 40 Treaty body follow-up procedures 5.2 Institutions & policies - General 8 Equality & non-discrimination 9 Racial discrimination Affected persons: - general	Status: Not implemented Source: see Paragraphs 2.1 and 5.1
Right or area: 3.2. Cooperation with special procedures			
138.66. Continue cooperating with Special Procedures and accept in particular requests for visits from Special Rapporteurs (Belgium); Source of position: A/HRC/21/10 - Para. 138	Supported	3.2 Cooperation with special procedures 41 Follow-up to special procedures Affected persons: - general	Status: Not implemented Source: see Paragraphs 2.1 and 5.1
138.67. Adopt the recommendations of the Special Rapporteur on the situation of human rights defenders and the necessary measures to its recognition and protection, guaranteeing that the human rights violations are timely, effectively and independently investigated (Spain); Source of position: A/HRC/21/10 - Para. 138	Noted	3.2 Cooperation with special procedures 41 Follow-up to special procedures 36 Human rights defenders 5.2 Institutions & policies - General 15.1 Administration of justice & fair trial 16 Right to an effective remedy, impunity Affected persons: - human rights defenders	Status: Not fully implemented Source: See paragraphs 3.3-3-9 and 2.1 and 5.1
Right or area: 13.1. Liberty & security – general			

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>138.127. Ensure a safe working environment for journalists and take proactive measures to address the issue of impunity, such as swift and independent investigations (Austria);</p> <p>Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 6</p> <p>Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 6: Ensure a safe working environment for journalists. (Austria)</p>	Supported /Noted	<p>13.1 Liberty and security - general</p> <p>5.2 Institutions & policies - General</p> <p>14.3 Freedom of opinion and expression</p> <p>16 Right to an effective remedy, impunity</p> <p>Affected persons:</p> <p>- general</p>	<p>Status: Not implemented</p> <p>Source: Paragraphs 4.3-4.7</p>
Right or area: 14.3. Freedom of opinion and expression			
<p>138.126. Ensure that measures limiting freedom of expression on the internet is based on clearly defined criteria in accordance with international human rights standard (Sweden);</p> <p>Source of position: A/HRC/21/10 - Para. 138</p>	Noted	<p>14.3 Freedom of opinion and expression</p> <p>2.1 Acceptance of international norms</p> <p>5.1 Constitutional and legislative framework</p> <p>5.2 Institutions & policies - General</p> <p>Affected persons:</p> <p>- general</p>	<p>Status: Not implemented</p> <p>Source: Paragraphs 4.3-4.7</p>
Right or area: 36. Human rights defenders			
<p>138.43. Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes (Czech Republic);</p> <p>Source of position: A/HRC/21/10 - Para. 138</p>	Noted	<p>36 Human rights defenders</p> <p>5.1 Constitutional and legislative framework</p> <p>8 Equality & non-discrimination</p> <p>32 Members of minorities</p> <p>33 Indigenous peoples</p> <p>Affected persons:</p> <p>- human rights defenders</p>	<p>Status: Not implemented</p> <p>Source: 3.2-3.9</p>
Right or area: 41. Follow-up to special procedures			

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>138.68. Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women’s and children’s rights, defenders of minorities rights, including Dalits and Adivasi, and right to information activists (Norway);</p> <p>Source of position: A/HRC/21/10 - Para. 138</p>	Noted	<p>41 Follow-up to special procedures</p> <p>5.2 Institutions & policies - General</p> <p>36 Human rights defenders</p> <p>Affected persons:</p> <p>- human rights defenders</p>	<p>Status: Not implemented</p> <p>Source: 3.2-3.9</p>