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Submission by **CIVICUS: World Alliance for Citizen Participation,**
NGO in General Consultative Status with ECOSOC

And

Human Rights Defenders Alert – India

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1. Introduction 22 733 3435

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- 1.1** CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2** Human Rights Defenders Alert – India (HRDA) was founded in 2010 as a platform of human rights defenders (HRDs) for HRDs in India, helping defenders to navigate and overcome the daunting challenges from state and non-state actors.
- 1.3** In this submission, the two organisations 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 fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on HRDs since its previous UPR examination in 2017. To this end, we assess India’s implementation of recommendations received during the 3rd UPR cycle relating to these issues and provide a number of follow-up recommendations.
- 1.4** During the 3rd cycle, the Government of India received 12 recommendations relating to the space for civil society (civic space). Of these recommendations, 11 were only noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrates that the Government of India has only partially implemented four recommendations related to civic space. Acute implementation gaps were found with regard to the rights to the freedoms of association and peaceful assembly.
- 1.5** In particular, we are deeply concerned by the continued use of the draconian Foreign Contributions Regulation Act (FCRA) to target CSOs, block foreign funding and investigate organisations that are critical of the government.
- 1.6** We are further alarmed by the continued judicial harassment of HRDs and journalists and the use of repressive security laws to keep them detained as well as restrictions on and excessive use of force against protesters.
- 1.7** There are also concerns that the National Human Rights Commission of India has been neither independent nor effective in investigating human rights violations.¹

¹ ‘Mission Report – Performance of National Human Rights Commission of India’, Forum-Asia, 19 July 2019, <https://www.forum-asia.org/?p=29293>; ‘India: Appointment of new Chairperson and members undermines Human Rights Commission’s independence and credibility’, Forum-Asia, 11 June 2021, <https://www.forum-asia.org/?p=35065>.

1.8 As a result of these issues, India's civic space rating was downgraded in December 2019.² It is currently classified as 'repressed' by the CIVICUS Monitor, indicating the existence of severe civic space restrictions.³

- Section 2 of this submission examines India's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines India's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines India's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, media freedom and access to information.
- Section 5 examines India's implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 contains recommendations to address the concerns raised and advance implementation of recommendations under the 2nd cycle.
- An annex on the implementation of 3rd cycle UPR recommendations related to civic space is in Section 7.

2. Freedom of association

2.1 During India's examination under the 3rd UPR cycle, the government received five recommendations on the right to the freedom of association and creating an enabling environment for CSOs. The recommendations included calls to review and amend the FCRA to ensure the right to freedom of association, which includes the ability of CSOs to access foreign funding. The government noted all five recommendations. As evidenced below, the government has failed to take adequate measures to realise any of the recommendations.

2.2 Article 19(c) of the Indian Constitution guarantees the right to form associations and unions.⁴ Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party, also guarantees the freedom of association. However, despite these commitments, the government has used restrictive legislation to target CSOs, block foreign funding and investigate organisations that are critical of the government.

² 'People Power Under Attack', CIVICUS Monitor, 2019, <https://monitor.civicus.org/India.PeoplePowerUnderAttack.2019>.

³ CIVICUS Monitor: India, <https://monitor.civicus.org/country/India>.

⁴ 'The Constitution of India', 26 November 2021, <https://legislative.gov.in/sites/default/files/COI...pdf>.

- 2.3** The FCRA, which regulates the acceptance and use of foreign funding for civil society, is often used to target critical CSOs. Amended and readopted in 2010, its broad and vague definitions lend themselves to applications that are disproportionate to its purported goal.⁵ Among other issues, the Act prohibits the receipt of foreign funds 'for any activities prejudicial to the public interest'.⁶ In 2016, three UN human rights experts urged the government to repeal the law, stating that it was being used to 'obstruct' access to foreign funding and that it 'fails to comply with international human rights standards'.⁷
- 2.4** Amendments to the FCRA passed in 2020⁸ added intrusive governmental oversight, additional regulations and certification processes, and a ban on sub-granting,⁹ which have further adversely affected CSOs' access to foreign funding and their ability to carry out human rights work.¹⁰
- 2.5** Numerous CSOs have been targeted since the last UPR review. Amnesty International offices were raided in Bengaluru and New Delhi in October 2018 and November 2019¹¹ for alleged violations of the FCRA, it what were believed to be reprisals for its work. The authorities subsequently froze its accounts.¹² The organisation halted its work in India in September 2020 after the government froze

⁵ 'Punished for Speaking Up: The ongoing use of restrictive laws to stifle dissent in India', CIVICUS, 22 September 2020, <https://www.civicus.org/documents/reports-and-publications/India.PunishedForSpeakingup.pdf>.

⁶ 'Safeguard human rights defenders, rights of NGOs in India, Bachelet urges', United Nations, 20 October 2020, <https://news.un.org/en/story/2020/10/1075792>.

⁷ 'UN rights experts urge India to repeal law restricting NGO's access to crucial foreign funding', United Nations Human Rights Office of the High Commissioner, 16 June 2016, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>.

⁸ Analysis by the International Commission of Jurists concluded that the amendments brought in 2020 violate several international legal norms including rights to freedom of association, expression, peaceful assembly and the right to take part in the conduct of public affairs. See 'India's Foreign Contribution Regulation Act: A Tool to Silence Indian Civil Society Organizations', International Commission of Jurists, December 2020, <https://www.icj.org/wp-content/uploads/2020/12/India-FCRA-Briefing-Paper-2020-ENG.pdf>.

⁹ The ban on sub-granting of foreign funds is a major concern: 4,107 of 21,490 FCRA-registered CSOs depended on sub-grants in the 2018-2019 financial year and accounted for 11 per cent of foreign contributions received during the period. With the amendments, these CSOs remain vulnerable to having to shut down their operations and make staff unemployed. See 'First port of call for many in pandemic: NGOs urge Kovind not to give assent to FCRA Bill', The Indian Express. <https://indianexpress.com/article/india/first-port-of-call-for-many-in-pandemic-ngos-urge-kovind-not-to-give-assent-to-fcra-bill-6609727>; 'Research and Knowledge', Ashoka University: Centre for Social Impact and Philanthropy, <https://csip.ashoka.edu.in/research-and-knowledge>.

¹⁰ 'Persecution Of Activists, Raids In Kashmir And Increasing Restrictions On Foreign Funding In India', CIVICUS Monitor, 12 January 2021, <https://monitor.civicus.org/updates/2021/01/12/persecution-activists-raids-kashmir-and-increasing-restrictions-foreign-funding-india>.

¹¹ 'Amnesty International offices in India raided by federal police', Al Jazeera, 15 November 2019, <https://www.aljazeera.com/news/2019/11/15/amnesty-international-offices-in-india-raided-by-federal-police>.

¹² 'Authorities Raid Amnesty International's Regional Office', CIVICUS Monitor, 26 October 2018, <https://monitor.civicus.org/updates/2018/10/26/authorities-raid-amnesty-internationals-regional-office>; 'Amnesty says tax raid at its Indian office is assault on civil society', The Guardian, 26 October 2018, <https://www.theguardian.com/world/2018/oct/26/amnesty-says-tax-raid-indian-office-assault-on-civil-society>.

its bank accounts again.¹³

- 2.6** In July 2019, Indian authorities raided the home and offices of noted Indian HRDs and lawyers Anand Grover and Indira Jaising in an alleged case of violation of the FCRA by Lawyers Collective, a CSO they cofounded.¹⁴
- 2.7** In January 2022, the Central Bureau of Investigation (CBI) filed a criminal case against The Centre for Promotion of Social Concern (CPSC) on allegations of fraud and financial irregularities under the FCRA. When the CPSC challenged the government's decision in the Delhi High Court, the Home Affairs Ministry told the court that the group used foreign funding to share information with United Nations special rapporteurs and foreign embassies, 'portraying India's human rights record in negative light...to the detriment of India's image'. The government characterised the CSO's actions as 'undesirable activities detrimental to national interest'.¹⁵ Two days after the case was filed, CBI officials searched the premises of CPSC and its programme unit, People's Watch, in Madurai and confiscated documents for investigation.
- 2.8** Oxfam India stated in January 2022 that the government has refused to renew its FCRA registration, which would severely affect the organisation's ongoing crucial humanitarian and social work in 16 states of India. No reason was disclosed for this.¹⁶
- 2.9** The authorities have also harassed CSOs in Jammu and Kashmir. In October 2020, the houses and offices of several HRDs were raided by National Investigation Agency officials. The raided premises included the houses and offices of several well-known HRDs, including Parveena Ahangar, Chairperson of the Association of Parents of Disappeared Persons and Khurram Parvez, Coordinator of the Jammu and Kashmir Coalition of Civil Society and Chairperson of the Asian Federation Against Involuntary Disappearances. These raids were said to be undertaken to investigate

¹³ 'India: Amnesty International Forced to Halt Work', CIVICUS, 30 September 2020, <https://www.civicus.org/index.php/media-resources/news/4659-india-amnesty-international-forced-to-halt-work>.

¹⁴ 'Raid On Lawyers Collective By Indian Police Aimed To 'Intimidate And Silence' Them', CIVICUS Monitor, 13 July 2019, <https://monitor.civicus.org/updates/2019/07/13/lawyers-collective-raided-indian-police-intimidate-and-silence-them>.

¹⁵ See 'India Should Stop Using Abusive Foreign Funding Law', Amnesty International, 19 January 2022, <https://www.amnesty.org/en/latest/news/2022/01/india-should-stop-using-abusive-foreign-funding-law>.

¹⁶ 'India: Halt judicial harassment of rights groups over foreign funding', CIVICUS, 12 January 2022, <https://www.civicus.org/index.php/media-resources/news/5544-india-halt-judicial-harassment-of-rights-groups-over-foreign-funding>; 'NGOs, Lost In The FCRA Maze', Bloomberg Quint, 23 January 2022, <https://www.bloombergquint.com/business/ngos-lost-in-the-fcra-maze>.

the use of funding for 'carrying out secessionist and separatist activities' in Kashmir.¹⁷

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

- 3.1** Under India's previous UPR examination, the government received one recommendation on the protection of HRDs, journalists and civil society representatives, which was only noted. As examined in this section, the government has not implemented this recommendation.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR further guarantees the freedoms of association, peaceful assembly and expression. However, in spite of these protections, there is no specific law to protect HRDs in India and they continue to be criminalised on trumped-up charges or face intimidation and attacks for carrying out their work. Some HRDs have been killed with impunity. Women HRDs are often targeted with gender-specific threats, such as rape and sexual violence threats, both online and offline.¹⁸
- 3.3** One of the laws increasingly misused to detain HRDs is the Unlawful Activities (Prevention) Act (UAPA), India's primary counter-terrorism law.¹⁹ Individuals detained under the UAPA can be held without being charged by the police for up to 180 days, as opposed to the usual 60 to 90 days under Indian criminal law. Further, the slow investigative processes and extremely stringent bail provisions under the UAPA ensure that those detained under the law are held in pre-trial detention for long periods. UN experts have raised concerns about various provisions in the UAPA

¹⁷ The raids were also conducted in Bengaluru at the residence of Swati Sheshadri and in Delhi at the residence of Zafarul Islam Khan, Chairperson of the NGO Charity Alliance and former Chairperson of the Delhi Minorities Commission. Documents and electronic devices, including hard disks containing sensitive information such as victims' personal data and testimonies, were seized during these raids. See 'India: Human rights body must raise concerns over crackdown', CIVICUS, 27 November 2020, <https://www.civicus.org/index.php/media-resources/news/4764-india-human-rights-body-must-raise-concerns-over-crackdown>.

¹⁸ 'Activists say NHRC urgently needs to protect human rights defenders', The New Indian Express, 11 December 2019, <https://www.newindianexpress.com/nation/2019/dec/11/activists-say-nhrc-urgently-needs-to-protect-human-rights-defenders-2074511.html>.

¹⁹ 'The Unlawful Activities (Prevention) Act, 1967', https://www.mha.gov.in/sites/default/files/UAPA-1967_0.pdf.

that are inconsistent with international human rights law and standards.²⁰

- 3.4** Other laws often used against HRDs include section 124A of the Penal Code, on sedition, a provision that is excessively vague and broad and gives the authorities scope to criminalise speech critical of government actions, and Penal Code section 153A on ‘promoting enmity between different groups’. The National Security Act 1980²¹ has also been used to hold activists without charge or trial in administrative detention for up to 12 months on grounds of national security and maintenance of public order. The Public Safety Act (PSA) of Jammu and Kashmir, which permits administrative detention is also used. Detainees cannot challenge the decision to detain them in any meaningful way: there is no provision for judicial review of detention in the PSA. Detainees are also not permitted legal representation before the advisory board, the executive detaining authority that confirms detention orders.²²
- 3.5** 16 HRDs, including activists, academics and lawyers defending the rights of some of most excluded communities, such as the Adivasi and Dalit peoples, were arrested and detained under the UAPA in June 2018 on allegations of inciting caste violence in Bhima Koregaon village in Pune district, and accusations of links with ‘unlawful organisations’, none which have been substantiated. Their repeated requests for bail on medical grounds have been rejected by the courts. One of them, Father Stan Samy, a tribal rights activist, died in July 2021, awaiting bail on health grounds.²³ The rest remain in detention. Reports by an independent digital forensics firm in 2021 found evidence of files planted on the computers of at least two of the activists.²⁴
- 3.6** The authorities have also criminalised student activists. In January 2019, Delhi Police filed cases against student leaders Umar Khalid, Kanhaiya Kumar and others

²⁰ Communication sent by Special Procedures to India (OL IND 7/2020), 6 May 2020,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25219>.

²¹ This preventive detention violates various due process rights, including the presumption of innocence. Its vague definition means that it can be applied arbitrarily to target protesters and HRDs. See ‘The National Security Act’, 1980, https://legislative.gov.in/sites/default/files/A1980-65_0.pdf.

²² Regressive amendments to the Act in 2018 have led to detainees being held in prisons far from their homes, in violation of international human rights standards. See ‘The Jammu and Kashmir Public Safety Act, 1978’, University of Minnesota: Human Rights Library, <http://hrlibrary.umn.edu/research/jammu-publicsafetyact1978.html>.

²³ ‘Death Of Fr Swamy And Increasing Online Restrictions Highlights Risk Facing Activists In India’, CIVICUS Monitor, 9 July 2021, <https://monitor.civicus.org/updates/2021/07/09/death-fr-swamy-and-increasing-online-restrictions-highlights-risk-facing-activists-india>.

²⁴ ‘Indian Government Snooping Row Sparks Outrage As Restrictions On Civic Freedoms Persist’, CIVICUS Monitor, 15 September 2021, <https://monitor.civicus.org/updates/2021/09/15/indian-government-snooping-row-sparks-outrage-restrictions-civic-freedoms-persist>.

for sedition. They were accused of using ‘anti-national slogans’ in Jawaharlal Nehru University in February 2016.²⁵ In April 2020, Delhi police charged two student activists and alumni of Jamia Millia Islamia University, Meeran Haider and Safoora Zargar, along with others, under the UAPA for their activism against the discriminatory Citizenship (Amendment) Act (CAA) 2019.²⁶ Devangana Kalita and Natasha Narwal, founding members of Pinjra Tod, a collective of women students and alumni, were detained under the UAPA in May 2020 for protests against the CAA.²⁷

3.7 Environmental and Indigenous rights defenders have also been targeted. In June 2018, activist Piyush Manush, who had been opposing the introduction of mining companies in Kanjamalai Hills, was arrested in Tamil Nadu.²⁸ In February 2021, Delhi police arrested climate activist Disha Ravi at her home in Bengaluru for allegedly editing a protest toolkit and charged her with sedition. Hidme Markam, an Adivasi woman HRD, was arrested under the UAPA in March 2021 when she and hundreds of other villagers gathered in Dantewada to mark International Women’s Day.²⁹

3.8 Attacks against right to information (RTI) activists have persisted, with some being killed with impunity.³⁰ In July 2018, RTI activist Valmiki Yadav and his associate, Dharmendra Yadav, were shot dead by four unknown assailants in Bihar’s Jamui district. Yadav is alleged to have been targeted after he exposed financial irregularities in public welfare programmes and development work in Bihar.³¹ In September 2021, Rai Singh Gurjar, an RTI activist from Rajasthan, was murdered for his work in exposing corruption in the village council.³²

²⁵ ‘Ongoing Attacks On Journalists And Activists, As Elections Draw Near’, CIVICUS Monitor, 12 February 2019, <https://monitor.civicus.org/updates/2019/02/12/ongoing-attacks-journalists-and-activists-elections-draw-near>.

²⁶ ‘In India The Situation Of Activists And Journalists Remains Precarious Under The Covid-19 Lockdown’, CIVICUS Monitor, 6 May 2020, <https://monitor.civicus.org/updates/2020/05/06/india-situation-activists-and-journalists-remains-precarious-under-covid-19-lockdown>.

²⁷ Both were released on bail in June 2021. See ‘India: Women human rights defenders still in pre-detention after 300 days’, CIVICUS, 19 March 2021, <https://www.civicus.org/index.php/media-resources/news/4985-india-women-human-rights-defenders-still-in-pre-detention-after-300-days>; ‘Pinjra Tod activists Devangana Kalita, Natasha Narwal granted bail, Delhi HC hails right to protest’, India Today, 15 June 2021, <https://www.indiatoday.in/law/story/pinjra-tod-activists-devangana-kalita-natasha-narwal-granted-bail-1814937-2021-06-15>.

²⁸ ‘India: Anti-Corruption Activists Under Attack’, CIVICUS Monitor, 31 July 2018, <https://monitor.civicus.org/updates/2018/07/31/india-anti-corruption-activists-under-attack>.

²⁹ CIVICUS Monitor, 9 July 2021, op. cit.

³⁰ ‘10 RTI Activists Killed or Assaulted Since COVID Lock-down in March 2020; As Usual No One Cares’, Moneylife, 14 May 2021, <https://www.moneylife.in/article/10-rti-activists-killed-or-assaulted-since-covid-lock-down-in-march-2020-as-usual-no-one-cares/63865.html>.

³¹ CIVICUS Monitor, 31 July 2018, op. cit.

³² ‘Increasing Use Of Draconian UAPA And Other Repressive Laws To Stifle Dissent In India’, CIVICUS Monitor, 2 December 2021, <https://monitor.civicus.org/updates/2021/12/02/increasing-use-draconian-uapa-and-other-repressive-laws-stifle-dissent-india>.

- 3.9** HRDs in Jammu and Kashmir are also at risk of arrest and detention. Mian Abdul Qayoom, a senior human rights lawyer and president of the Jammu and Kashmir High Court Bar Association, was detained on 4 August 2019, the day before the government of India revoked the special constitutional status of Jammu and Kashmir. He was booked under the Public Safety Act and detained under its preventive detention provisions.³³ Khurram Parvez, Programme Coordinator of the Jammu and Kashmir Coalition of Civil Society, was detained under the UAPA on 22 November 2021 and is facing multiple charges.³⁴
- 3.10** In July 2021, reports surfaced about a leaked database of 50,000 people who may have been targeted for surveillance by clients of NSO Group, an Israeli company that develops and sells the Pegasus surveillance spyware . The leaked data included phone numbers of Indian journalists, activists and political prisoners.³⁵ There continues to be concerns about powers of the authorities related to communication surveillance laws, the lack of judicial safeguards and oversight, and the implications for the right to privacy.³⁶

4. Freedom of expression, media freedom and access to information

- 4.1** Under the 3rd UPR cycle, the government received five recommendations relating to the freedom of expression, media freedom and access to information. These included a call to carry out independent investigations in all cases of attacks against journalists and to ensure that any measure limiting internet freedom of expression is based on clearly defined criteria in accordance with international law. All the recommendations were only noted. The government did not take effective measures to implement these recommendations and has only partially implemented three of them.

³³ On 29 July 2020, the central government informed the Supreme Court that Mian’s detention would not be extended, provided that he stayed in Delhi until 7 August 2020 at the earliest. He was also banned from issuing any statements as a condition of his release. On 1 August 2020 he was released after spending 360 days detention. See CIVICUS, 22 September 2020, op. cit.

³⁴ He was previously detained for 76 days in September 2016 after being barred from travelling to Switzerland to attend the 33rd session of the Human Rights Council. See ‘India: Release human rights defender Khurram Parvez & stop harassment of activists in Jammu & Kashmir’, CIVICUS, 20 January 2022, <https://www.civicus.org/index.php/media-resources/news/5548-india-release-human-rights-defender-khurram-parvez-stop-harassment-of-activists-in-jammu-kashmir>.

³⁵ CIVICUS Monitor, 15 September 2021, op. cit.

³⁶ Communication surveillance in India takes place primarily under two laws, the Telegraph Act, 1885 and the Information Technology Act, 2000. While the Telegraph Act deals with interception of calls, the Information Technology Act was enacted to deal with surveillance of all electronic communication. See ‘Provision of Real-time Lawful Interception Assistance’, Country Legal Frameworks Resources, March 2017, <https://clfr.globalnetworkinitiative.org/country/india>; ‘Response to Call for Submissions: The Surveillance Industry and Human Rights’, The Centre for Internet & Society, 15 February 2019, <https://cis-india.org/internet-governance/resources/the-surveillance-industry-and-human-rights.pdf>.

- 4.2** Article 19 of the ICCPR guarantees the right to the freedoms 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’.³⁷ While India’s media is vigorous and diverse, and investigations and scrutiny of politicians occur, in policy and practice the Indian authorities continue to use restrictive legislation to prosecute journalists and critics. Several journalists have been killed and others physically attacked, intimidated or harassed for their work to expose human rights violations or corruption.
- 4.3** In October 2020, Siddique Kappan, a journalist with a Malayalam news organisation, was arrested along with three others and booked by the Uttar Pradesh police under provisions of the UAPA and on sedition charges. They were on their way to Hathras to cover the story of Dalit girl who was gang-raped.³⁸ In February 2021, it was reported that six journalists had been charged with sedition and breaches other laws over their reporting and online posts about the mass farmers’ protests against the farm laws that came into force in September 2020.³⁹ In November 2021, the Tripura police registered a case against two journalists – Swarna Jha and Samriddhi K Sakunia – for covering anti-Muslim violence in the area.⁴⁰
- 4.4** Journalists in Jammu and Kashmir have also been targeted by the police. In April 2020, the police charged Kashmiri photojournalist Masrat Zahra under the UAPA for posting what they called ‘anti-national’ content on social media.⁴¹ In January 2021, police opened criminal investigations into journalists Sajad Gul, Mir Junaid and Yashraj Sharma for their reporting.⁴²
- 4.5** There have also been reports of journalists being attacked and killed by unknown individuals. The Committee to Protect Journalists reported that India has the highest

³⁷ ‘The Constitution of India’, op. cit.

³⁸ CIVICUS Monitor, 12 January 2021, op. cit.

³⁹ The journalists accused include Rajdeep Sardesai, a prominent anchor on the India Today television channel, National Herald’s senior consulting editor Mrinal Pande, Qaumi Awaz editor Zafar Agha, The Caravan magazine’s editor and founder Paresh Nath, The Caravan editor Anant Nath and its executive editor Vinod K Jose. See ‘Indian Authorities Target Activists, Journalists As They Suppress Support For The Farmers’ Protests’, CIVICUS Monitor, 24 February 2021, <https://monitor.civicus.org/updates/2021/02/24/indian-authorities-target-activists-journalists-they-suppress-support-farmers-protests>.

⁴⁰ CIVICUS Monitor, 2 December 2021, op. cit.

⁴¹ CIVICUS Monitor, 6 May 2020, op. cit.

⁴² The investigation into Sharma and Junaid concerns reports they published in The Kashmirwalla and The Kashmiriyat, which each quoted the chairperson of a school in the southern Kashmiri city of Shopian, who said that Indian Army authorities had pressured the school to celebrate Republic Day. The investigation into Gul stems from an article he published on residents of Hajin, a town in Bandipora district, north Kashmir, where a local government official, Ghulam Mohammad Bhat, had threatened them and forcefully demolished their homes. See ‘Indian Authorities Continue To Stifle Dissent And Persecute Activists Despite Pandemic Surge’, CIVICUS Monitor, 4 May 2021, <https://monitor.civicus.org/updates/2021/05/04/indian-authorities-continue-stifle-dissent-and-persecute-activists-despite-pandemic-surge>.

number of journalists killed in reprisals for their work.⁴³ In most cases no one has been brought to justice.

4.6 In September 2017, Bengaluru-based editor Gauri Lankesh was shot dead on her doorstep by unknown assailants on motorbikes. Lankesh was the editor of a Kannada newspaper and an avid critic of far-right ideologies and organisations.⁴⁴ In May 2019, journalist Pratap Patra from the Odisha daily Samaja faced a life-threatening attack by unknown persons. The attack was believed to be linked to his investigative article on illegal sand mining in the state.⁴⁵ Television journalist Sulabh Srivastava, based in Uttar Pradesh, who worked for ABP News and its regional arm ABP Ganga, was found dead on 13 June 2021 near a brick kiln just two days after he had written to senior police officers about receiving death threats following his reportage on an illegal liquor gang.⁴⁶

4.7 The Indian authorities have also sought to increase internet controls. In February 2021, the government announced new regulations under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, supposedly to curb social media abuse and targeting internet intermediaries, including social media services, digital news services and curated video streaming sites.⁴⁷ Human rights groups have raised concerns that the rules allow for greater governmental control over online content, threaten to weaken encryption and would seriously undermine the rights to privacy and freedom of expression online.⁴⁸ Media groups also fear that the regulations could lead to censorship of content seen as critical of the government. In June 2021, three UN human rights experts said the rules did not conform with international human rights norms.⁴⁹

4.8 Efforts have also been undertaken by the authorities to take down critical content on social media platforms. In February 2021, the government threatened to punish

⁴³ The Committee to Protect Journalists reported that 16 journalists were killed in India between 2017 and 2022. Of these, 13 journalists were murdered, two were killed during dangerous assignments and one was killed in crossfire. The slain journalists are: Achyutananda Sahu, Avinash Jha, Chandan Tiwari, Chennakeshavalu, Gauri Lankesh, Manish Kumar Singh, Navin Nischal, Rajesh Mishra, Rakesh Singh, Raman Kashyap, Sandeep Sharma, Shantanu Bhowmik, Shubham Mani Tripathi, Shujaat Bukhari, Sudip Dutta Bhaumik and Sulabh Srivastava. See: '16 Journalists Killed in India between 2017 and 2022 / Motive Confirmed', Committee to Protect Journalists, https://cpj.org/data/killed/asia/india/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&cc_fips%5B%5D=IN&start_year=2017&end_year=2022&group_by=location.

⁴⁴ CIVICUS Monitor, 31 July 2018, op. cit.

⁴⁵ 'Ongoing Attacks Against Environmental Activists And Journalists In India While Critics Harassed', CIVICUS Monitor, 10 September 2021, <https://monitor.civicus.org/updates/2019/09/10/environmental-activists-and-journalists-among-human-rights-defenders-risk-india>.

⁴⁶ 'RSF calls for independent probe into Indian reporter's death in Uttar Pradesh', Reporters Without Borders, 14 June 2021, <https://rsf.org/en/news/rsf-calls-independent-probe-indian-reporters-death-uttar-pradesh>.

⁴⁷ CIVICUS Monitor, 4 May 2021, op. cit.

⁴⁸ 'Indian authorities tighten control over online content', Access Now, 25 February 2021, <https://www.accessnow.org/indian-authorities-tighten-control-over-online-content>.

⁴⁹ Communication sent by Special Procedures to India (OL IND 7/2020), op. cit.

employees at Twitter with fines and jail terms of up to seven years for restoring hundreds of accounts it had ordered the company to block. Most accounts were critical of the prime minister.⁵⁰

4.9 In March 2021, the Ministry of Electronics and Information Technology directed Twitter in several separate orders to shut down over 1,000 accounts under section 69A of the Information Technology Act, claiming they were spreading misinformation on the farmers' protests. Twitter initially complied but then said that it would not take action on accounts belonging to news media entities, journalists, activists and politicians. In late April 2021 it was reported that Twitter and Facebook had taken down or blocked political content critical of the Indian government. Facebook confirmed that it temporarily blocked posts with a #ResignModi hashtag while Twitter acknowledged that the Indian government asked it to take down tweets that were critical of India's handling of the second wave of the COVID-19 pandemic.⁵¹

4.10 Internet shutdowns have been another tactic deployed by the authorities to block the flow of information. According to Access Now, in 2019 there were 121 incidents of shutdowns in India⁵² while in 2020, the internet was shut down a total of at least 109 times.⁵³ The authorities have imposed multiple shutdowns in Jammu and Kashmir since 2019, which have had significant consequences, negatively impacting on the economy, education, access to healthcare, press freedom, the freedom of expression and the right to engage in political decision making.⁵⁴ UN human rights experts have described the communication shutdown as 'collective punishment'.⁵⁵ Following the death of Kashmiri leader Syed Ali Shah Geelani on 1 September 2021, human rights groups reported that the authorities shut down mobile phone networks and all internet services in the Kashmir valley.⁵⁶

4.11 Shutdowns were also used to disrupt the farmers' protests. On 1 February 2021, internet access was blocked in several districts of a state bordering India's capital. Online access was suspended in at least 14 of 22 districts in Haryana state

⁵⁰ CIVICUS Monitor, 9 July 2021, op. cit.

⁵¹ CIVICUS Monitor, 4 May 2021, op. cit.

⁵² 'Targeted, Cut Off, And Left in The Dark', Keep It On,

<https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>.

⁵³ '#KeepItOn report: India shuts down internet more than any other nation on earth', Access Now, 3 March 2021, <https://www.accessnow.org/keepiton-report-india-shuts-down-internet-more-than-any-other-nation-on-earth>.

⁵⁴ 'India: End communication blockade in Jammu and Kashmir without further delay', CIVICUS, 4 October 2019, <https://www.civicus.org/index.php/media-resources/news/4105-india-end-communication-blockade-in-jammu-and-kashmir-without-further-delay>; 'Jammu and Kashmir: 93 internet shutdown orders issued after SC ruling on communication restrictions', Scroll In, 7 March 2022, <https://scroll.in/latest/1011995/jammu-and-kashmir-93-internet-shutdown-orders-issued-after-sc-order-on-communication-restrictions>.

⁵⁵ 'Kashmir communications shutdown a 'collective punishment' that must be reversed, say UN experts', United Nations, 22 August 2019, <https://news.un.org/en/story/2019/08/1044741>.

⁵⁶ CIVICUS Monitor, 15 September 2021, op. cit.

near New Delhi.⁵⁷ On 7 September 2021, the Haryana government suspended mobile internet services in five districts of the state ahead of a farmers' protest in Karnal.⁵⁸

5. Freedom of peaceful assembly

- 5.1 During India's examination under the 3rd UPR cycle, the government received one recommendation on the right to the freedom of peaceful assembly, which it noted. However, the government has only partially implemented this recommendation.
- 5.2 Article 19(1)(b) of the Constitution of India guarantees the right to the freedom of peaceful assembly. Article 21 of the ICCPR also guarantees this right. However, in practice there have been numerous cases where protests have been blocked or restricted and where the police have used unnecessary or excessive force and firearms to disperse protests.⁵⁹
- 5.3 The Police Standing Orders of various Indian states mandate that protests at the designated protest sites in each city or town can be held only after securing a police permit and a 'No Objection Certificate' from the police. This is inconsistent with international law, which only requires police notification.
- 5.4 The legal provision most frequently used to prohibit the holding of assemblies in public spaces is the issuance of orders under section 144 of the Code of Criminal Procedure. The provision allows a district magistrate to issue orders prohibiting any assembly of four or more persons in a particular geographical area within the district. Other measures include the restriction or prohibition of movement or of vehicular movement and, more recently, restriction or suspension of the internet.⁶⁰ While the law is primarily meant to be applied in emergencies to maintain 'public tranquillity', authorities have used it widely and frequently to prevent protests, violating the right to peaceful assembly.⁶¹
- 5.5 After the anti-CAA protests began in late 2019, section 144 orders were imposed in many parts of Karnataka and Uttar Pradesh states to restrict gatherings of people at

⁵⁷ CIVICUS Monitor, 24 February 2021, op. cit.

⁵⁸ CIVICUS Monitor, 15 September 2021, op. cit.

⁵⁹ Restrictions to the right to freedom of assembly are stipulated in article 19(3) of the Constitution, which states that the right provided in article 19(1)(b) can only be curtailed by reasonable restrictions imposed in the interest of the following three factors: to protect the sovereignty of India, to protect the integrity of India and to preserve public order. See the Constitution of India, op. cit.

⁶⁰ Orders prohibiting the holding of an assembly may be directed at a particular individual or group of people or a blanket prohibition may be imposed against the public. See 'Assessing India's Legal Framework On The Right To Peaceful Assembly', The International Center for Not-for-Profit Law, December 2021, <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>.

⁶¹ "Shoot the Traitors": Discrimination Against Muslims under India's New Citizenship Policy', Human Rights Watch, 9 April 2020, <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>.

protest sites and to restrict the freedom of movement. Such bans on protests have also been imposed in other parts of the country, including Bhopal, Bhubaneswar, Delhi, Mumbai, Nagpur and Pune.⁶²

- 5.6** Protests against the CAA in 2019 and early 2020 were largely peaceful, apart from minor incidents of destruction of property and stone throwing. But protesters were met with brutal and excessive force by the police. Dozens were reported killed, many allegedly due to bullet injuries from police use of firearms, while hundreds were injured. Hundreds of protesters were arrested and detained, including HRDs, and there have been allegations of torture and ill-treatment.
- 5.7** In New Delhi, on 15 December 2019 more than 100 people protesting against the CAA were injured after police used teargas and baton charges to disperse a demonstration by students from Jamia Milia Islamia University, as well as by residents.⁶³ At Aligarh Muslim University in Uttar Pradesh on the same day, thousands of students protesting against the CAA outside the university entrance were attacked by police wielding batons and firing teargas. Several students of Aligarh Muslim University who were detained by police after protests also alleged that they were beaten up in custody.⁶⁴
- 5.8** Over 15 protesters were killed and 250 injured by the police at the culmination of a 100 days of peaceful protest against Sterlite company in Thoothukudi in May 2018.⁶⁵
- 5.9** The authorities also used excessive force against the farmers' protests that began in November 2020. At the Delhi-Haryana border Haryana Police sprayed water cannon and teargas to stop the protesting farmers reaching Delhi.⁶⁶ In January 2021, police hit protesters with batons and fired teargas to try to disperse farmers who had entered the grounds of Delhi's Red Fort during the country's Republic Day celebrations. Mobile internet services were suspended in parts of Delhi and some metro stations closed.⁶⁷
- 5.10** Around the revocation of the special status of Jammu and Kashmir in August 2019, the government imposed a ban on public meetings and restrictions on movement. On 9 August 2019, security forces quashed protests with teargas and shotgun

⁶² 'India: The UN must condemn crimes against peaceful protesters', CIVICUS, 2 March 2020, <https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/4296-india-the-un-must-condemn-crimes-against-peaceful-protesters>.

⁶³ 'Discriminatory Citizenship Law Sparks A Month Of Protests In India And Brutal Response From Police', CIVICUS Monitor, 13 January 2020, <https://monitor.civicus.org/updates/2020/01/13/discriminatory-citizenship-law-sparks-month-protests-india-and-brutal-response-police>.

⁶⁴ CIVICUS Monitor, 13 January 2020, op. cit.

⁶⁵ 'The day Tuticorin burned', People's Watch, https://www.peopleswatch.org/sites/default/files/reports/full_report/PI%20TUT%20-%20Part%20I%20Final%20without%20Annexures.pdf.

⁶⁶ CIVICUS Monitor, 12 January 2021, op. cit.

⁶⁷ CIVICUS Monitor, 24 February 2021, op. cit.

pellets.⁶⁸

6. 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: the freedoms of association, peaceful assembly and expression, 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 the light of this, the following specific recommendations are made:

16.1 Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the freedom of association.
- Remove all undue restrictions on the ability of CSOs to receive international funding in line with best practices articulated by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.
- Immediately reinstate any CSOs that have been arbitrarily and unduly deregistered and cease unwarranted raids on CSOs
- Refrain from acts leading to the closure or suspension of CSOs and instead promote a meaningful political dialogue that allows and embraces diverging views, including those of CSOs, HRDs, journalists, political activists and others.
- Specifically, amend the Foreign Contributions Regulation Act to remove undue restrictions on the ability of CSOs to access foreign funding and to bring it into compliance with ICCPR articles 21 and 22.

⁶⁸ 'Civil Society Concerned About Risks To Fundamental Freedoms In Kashmir As Special Status Revoked', CIVICUS Monitor, 13 August 2019, <https://monitor.civicus.org/updates/2019/08/13/civil-society-concerned-about-risks-fundamental-freedoms-kashmir-special-status-revoked>.

16.2 Protection of human rights defenders

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Review and amend criminal laws to conform to international law and standards as set out in the ICCPR and by the UN Human Rights Committee and UN mechanisms such as the UN Special Rapporteur on the promotion of the right to freedom of opinion and expression. This includes the Unlawful Activities (Prevention) Act, Public Safety Act, National Security Act and sedition provisions in Indian Penal Code.
- Immediately and unconditionally release all HRDs, including student activists, journalists, academics and others detained for exercising their fundamental freedoms, and review their cases to prevent further harassment.
- Adopting a specific law on the protection of HRDs in accordance with Human Rights Council resolution 27.31.
- Take urgent steps to strengthen the independence and effectiveness of the National Human Rights Commission of India to monitor and investigate cases of threats and intimidation against HRDs and judicial harassment.
- Harmonise the legal framework that regulates communications surveillance to ensure that the law is accessible and clear, and meets India's international human rights obligations, and establish an independent and effective oversight mechanism with a mandate to monitor all stages of interceptions of communications.

16.3 Freedom of expression, media freedom and access to information

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive and adopt a framework for the protection of

journalists from persecution, intimidation and harassment.

- Revise the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) so that it conforms with international human rights norms related to online freedom of expression and ensure it is not used to censor content critical of the government.
- End the use of blanket or open-ended internet shutdowns and be more transparent in the issuance and extension of shutdown orders.

6.4 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the 2012 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which calls for simple processes for the notification of assemblies being held rather than permission being required. Specifically, repeal and modify existing policies to ensure that the existing 'permit regime' is replaced by a 'notification regime' for the holding of peaceful assemblies.
- Review and amend existing laws and regulations including section 144 of the Code of Criminal Procedure as well as Standing Orders issued by police and administrative authorities in order to guarantee fully the right to the freedom of peaceful assembly.
- Unconditionally and immediately release all protesters, HRDs and journalists detained for exercising their right to the freedom of peaceful assembly and drop all existing charges against them or quash their convictions.
- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces in the context of protests.
- Review and, if necessary, update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn at the highest levels all instances of the use of excessive and brutal force by security forces in response to protests, launch formal investigations into such instances and bring the perpetrators to justice.

6.5 Access to UN Special Procedures mandate holders

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and 3) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association;

6.6 State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.