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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
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And

Human Rights Institute of South Africa (HURISA)

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1. (A) Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.
- 1.2 Human Rights Institute of South Africa (HURISA) is an NGO formed in 1994 whose mission is to provide human rights training, research and advocacy interventions. HURISA collaborates with other NGOs, special target groups, national institutions as well as government departments to strengthen regional and international human rights systems, including promoting justice, peace, human rights and democracy in South Africa and beyond.
- 1.3 In this document, CIVICUS and HURISA examine the Government of South Africa's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse South Africa's fulfillment of the rights to freedom of association, peaceful assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in May 2012. To this end, we assess South Africa's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.
- 1.4 During the 2nd UPR cycle, the Government of South Africa received 151 recommendations of which 13 related to the above-mentioned freedoms/ civic space. Of these recommendations, 1 was accepted and 12 were noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of South Africa has only partially implemented these recommendations. However, acute implementation gaps were found with regard to the right to freedom of the media, protection of human rights defenders and freedom of peaceful assembly.
- 1.5 CIVICUS and HURISA are particularly concerned by the harassment of peaceful protestors and demonstrators by state security agents which impedes the right to freedom of peaceful assembly and the failure to sufficiently amend or repeal restrictive legislation limiting freedom of information.
 - In Section B, CIVICUS and HURISA examine South Africa's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
 - In Section C, CIVICUS and HURISA examine South Africa's implementation of UPR recommendations and its compliance with international human rights standards

related to the protection of human rights defenders, civil society activists and journalists.

- In Section D, CIVICUS and HURISA examine South Africa's implementation of UPR recommendations and compliance with international human rights standards concerning to freedom of expression, independence of the media and access to information.
- In Section E, CIVICUS and HURISA examine South Africa's implementation of UPR recommendations and its compliance with international human rights standards related to freedom of peaceful assembly.
- In Section F, CIVICUS and HURISA make a number of recommendations to address the concerns listed.

2. (B) Freedom of association

- 2.1** During its examination under the 2nd UPR cycle, the Government of South Africa received 2 recommendations on the right to freedom of association and creating an enabling environment for civil society organisations (CSOs) including ratification of the International Covenant on Economic, Social and Cultural Rights and International Labour Organisation (ILO) Convention 189. While both of these recommendations have been accepted and implemented, as evidenced below, the government has failed to take adequate measures to fully realise the right to freedom of association.
- 2.2** Article 18 of the Constitution of South Africa guarantees the right to freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which South Africa is a state party, also guarantees freedom of association. However, despite these commitments, the government has failed to take adequate measures to fully guarantee this right.
- 2.3** The registration of non-governmental organisations (NGOs) in South Africa is governed by the Non Profit Organisations (NPO) Act, 71 of 1997.¹ The NPO Directorate is responsible for overseeing this registration process. To register, an NGO must submit all required documents to the National Directorate of NPOs in the capital, Pretoria. Although, the government has established an online submission process, concerns remain that this procedure, which remains opaque, privileges NGOs in the capital and its surrounding cities which have direct access to the NPO directorate.²
- 2.4** According to the NPO Act, the registration process is not to exceed two months. However, several CSOs report experiencing delays from six to eighteen months to

¹ Department of Social Development, www.dsd.gov.za/npo/

² Paralegal advice, <http://paralegaladvice.org.za/chapter-sixteen/> Accessed 20 June 2016

register.³ Such a protracted registration process seriously impedes ability of organisations seeking registration for various purposes to exercise their right to freedom of association.

- 2.5** Under the NPO Act, NGOs must also submit annual audited financial statements and a narrative report to the Directorate. If an NGO fails to submit such documents upon notification, the Directorate may unilaterally deregister the NGO. We remain concerned that given the lack of transparency and safeguards against excessive state discretion, the deregistration process remains susceptible to state abuse and manipulation to harass or sanction outspoken and independent NGOs.
- 2.6** We remain further concerned by disparaging public statements made by senior government officials to undermine the legitimacy and credibility of independent civil society groups. For example, in April 2016, the State Security Minister accused non-governmental organisations of working with foreign forces “who work to destabilise the state” including by funding protests.⁴ Such public stigmatisation of NGOs by representatives of the government is both unwarranted and distorts the legitimate and important work of civil society in South Africa.

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

- 3.1** During South Africa’s previous UPR examination, the government did receive any recommendations specifically addressing restrictions on human rights defenders. However as examined in this section, the government has continued to intimidate and persecute human rights defenders and civil society activists for exercising their legitimate rights.
- 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. However, despite these protections, human rights defenders, especially those working on sensitive land and housing rights issues, continue to face severe intimidation and harassment, including assassination.

³CIVICUS, Enabling Environment National Assessment, <http://www.civicus.org/images/EENA-SouthAfrica2015.pdf>

⁴ News24, “Some NGOs are security agents of foreign source,” <http://www.news24.com/SouthAfrica/News/some-ngos-are-security-agents-of-foreign-forces-mahlobo-20160426>

- 3.3** In March 2016, community land rights activist Sikhosiphi Rhadebe was assassinated at his home by unknown assailants.⁵ Mr Rhadebe was the Chairperson of community group, Amadiba Crisis Committee, which opposes the mining of titanium in the Eastern Cape Province due to their harmful effects on local communities. Prior to the attack, members of the Amadiba Crisis Committee had reported several instances of harassment and intimidation by the police and local authorities. An hour and a half before his assassination, Sikhosiphi Rhadebe had contacted other members of his organisation warning them of a hit list containing his name. While the Directorate for Investigations initiated an investigation into Mr Rhadebe's murder, no formal charges have been filed.⁶
- 3.4** Thuli Ndlovu, Chairperson of the KwaNdengezi branch of Abahlali baseMjondolo, a civil society movement working to address housing rights, was shot and killed in her home in September 2014. Mr Ndlovu's killing was reportedly a deliberate reprisal for her work in support of equitable housing rights in the region, including opposing the misallocation of government housing. In May 2016, three local politicians were convicted by the Durban High Court and sentenced to life in prison for the murder.⁷ South Africa must ensure promotion of the right to right to life, which is constitutionally guaranteed. This should be done through educational programme that deepen the human dignity of an individual, community and a culture of respect of human rights to be inculcated at societal level

4. (D) Freedom of expression, independence of the media and access to information

- 4.1** Under the 2nd UPR cycle, the government received 11 recommendations relating to freedom of expression and access to information. Of the recommendations received, all 11 were noted. As discussed below, the government partially implemented two of these recommendations and not did implement 9 others, which specifically address shortcomings found in the Protection of State Information Bill.
- 4.2** Article 19 of the ICCPR which South Africa has ratified guarantees the right to freedom of expression and opinion. Section 16 (1) of the Constitution of South Africa also guarantees the right to freedom of expression. Under the constitution, freedom of expression also extends to freedom of the press, artistic creativity, academic

⁵CIVICUS, "Death is something we are expecting" <http://civicus.org/index.php/en/media-centre-129/news-and-resources-127/2395-death-is-something-we-were-expecting-interview-with-amadiba-crisis-committee>

⁶ CIVICUS, Recent Attacks on South African Civil Society Worrying, March 2016, <http://civicus.org/index.php/en/media-centre-129/news-and-resources-127/2417-justice-for-community-and-land-rights-activist-sikhosiphi-rhadebe-civil-society-writes-open-letter-to-south-african-president-zuma>

⁷ Durban, "ANC Councilors sentenced to life in imprisonment for murder," <http://www.idurban.co.za/anc-councillors-sentenced-to-life-imprisonment-for-murder/>

freedom and freedom of scientific research. Section 32 of the South African Constitution also provides for the right to access information. However, in practice, a restrictive legal framework undermines the full enjoyment of the right to freedom of expression.

- 4.3** The Protection of State Information Bill, also known as the “Secrecy Bill” was passed by the National Assembly in April 2013.⁸ While the final bill includes a number of important progressive changes suggested by civil society and other stakeholders, it also maintains a number of overboard and draconian provisions. Specifically, the bill includes ambiguous definitions of national security, including unidentified “economic” secrets and further endows the Minister of State Security with broad discretion to unilaterally classify information as a threat to national security. The bill criminalises leaking, possessing and “receiving” such information. Individuals who contravene the law can be sentenced to up to 25 years in prison. While the bill has neither received Presidential assent nor come into force, grave concerns persist that the bill may be invoked to persecute activists, whistle-blowers and journalists who reveal classified information in the public interest.⁹
- 4.4** Despite its glaring legal deficits, the National Key Points Act of 1980, adopted during the apartheid era, has not been repealed or sufficiently amended. Particularly, the law criminalises the divulging of any information that could compromise national security. Under the law, a fine of R10 000 (approximately 730 USD) and or a three-year jail sentence can be imposed for noncompliance with the law.
- 4.5** In May 2016, public broadcaster, the South African Broadcasting Corporation (SABC), announced¹⁰ that it would no longer broadcast violent protests, especially where public property was destroyed. As justification, SABC deemed that televising such protests would encourage individuals and groups to engage in similar action. Civil society and media outlets lodged a complaint with Independent Communications Authority of South Africa, alleging that such restrictions constitute unwarranted censorship and restrictions on freedom of expression.¹¹ Worryingly, despite these legitimate objections, this policy has been invoked to sanction SABC staff who aired images of protests. Most recently, in September 2016, SABC

⁸ The Protection of State Information Bill http://www.r2k.org.za/wp-content/uploads/Protection-of-State-Information-Bill-POSIB_bill06D-2010.pdf

⁹ Right 2 Know, “What’s still wrong with the Secrecy Bill” <http://www.r2k.org.za/2014/09/11/whats-still-wrong-with-the-secrecy-bill/>

¹⁰ SABC, “SABC won’t show footage of property damage during protests,” <http://www.sabc.co.za/news/a/d99218004ce9545882d0bb271348019a/SABC-wont-show-footage-of-damaged-property-during-protests--20160527>

¹¹ Mail and Guardian, “Civil Society and the public need to challenge Hlaudi-motsoenengs” <http://mg.co.za/article/2016-06-27-civil-society-and-the-public-need-to-challenge-hlaudi-motsoenengs-sabc-censorship/>

suspended eight journalists for screening violent protests scenes.¹² This matter was challenged constitutionally where a progressive judgment dispensed the guaranteed right to freedom of expression. The government must protect independent power of institutions with oversight mandate, including avoid unnecessary, unethical litigation processes at the expense of the tax payers.

5. (E) Freedom of peaceful assembly

- 5.1** Article 21 of the ICCPR guarantees the right to freedom of peaceful assembly. In addition, Article 17 of the South African Constitution also guarantees the right to freedom of assembly. During South Africa's previous UPR examination, the government did not receive any recommendations specifically addressing restrictions on the right to peaceful assembly. However, as examined below, in both policy and practice, including through the maintenance of restrictive legislation and the excessive use of force by security personnel, this right remains severely undermined.
- 5.2** The right to peaceful assembly in South Africa is regulated by the Gatherings Act (2015 of 1993). The Act requires organisers of assemblies to provide 7 days advanced notification to local authorities about protests or pickets of more than 15 persons. According to the Act, a notification proffered by an organizer must include information such as the name and address of the convenor, purpose and time of the gathering, duration, place and anticipated number of participants. Contravening provisions of the act, including holding a gathering without providing a notice to the authorities, can result in a fine of 20,000 Rand (approximately 1400 USD) and or imprisonment not exceeding one year.¹³
- 5.3** In 2014, 21 activists from the Social Justice Coalition, a civil society group which advocates for the rights of inhabitants of informal settlements, were accused of holding an illegal protest in September 2013 outside the Cape Town civic centre where they chained themselves to railings demanding to meet the municipal authorities. The activists were charged with contravening the Gatherings Act for failing to notify the authorities about the proposed action. The activists were found guilty of contravening the Act and discharged with caution.¹⁴

¹² South Africa National Editor's Forum

http://www.sanef.org.za/news/entry/sanef_shocked_by_sabc_suspensions/

¹³ Regulations gatherings Act, <http://www.gov.za/documents/regulation-gatherings-act>

¹⁴ Convicted activists vow to challenge Gatherings Act http://www.groundup.org.za/article/convicted-activists-vow-challenge-gatherings-law_2668/

- 5.4** Section 11 of the Gatherings Act also limits freedom of peaceful assembly as it holds organisers of protests liable for property damage caused by individual protestors even where the convenor has taken reasonable steps to ensure zero destruction of property. While the Constitutional Court ruled that this limit is reasonable and justifiable, such provisions undermine international best practice which stipulates that “the right to freedom of peaceful assembly is held by each individual participating in an assembly. Acts of sporadic violence or offences by some should not be attributed to others whose intentions and behavior remain peaceful in nature.”¹⁵
- 5.5** In addition to legal restrictions on protests, the authorities have increasingly resorted to excessive and even lethal force to disperse protests. In August 2012 police killed 34 protesting miners and members of the National Union of Mineworkers, who were demanding increased wages. While a subsequent government-mandated commission of inquiry determined that the police were largely responsible for the deaths committed during the protest, to date no prosecutions have been made.¹⁶ The lack of justice for this massacre remains a matter of serious concern.

6. (F) Recommendations to the Government of South Africa

CIVICUS and HURISA call on the Government of South Africa to create and maintain, in law and in practice, an enabling environment for civil society and human rights defenders 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, 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

¹⁵ UN Human Rights Council, A/HRC/31/66, <http://freeassembly.net/wp-content/uploads/2016/03/Protest-recommendations-factsheet-final.pdf>

¹⁶ Daily Maverick, “Marikana report key findings and recommendations,” <http://www.dailymaverick.co.za/article/2015-06-26-marikana-report-key-findings-and-recommendations/#.V3ZkC197IU>

- Take measures to foster a safe and enabling environment for civil society, including through removing legal measures, which unwarrantedly limit the right to association specifically the NPO Act by setting up offices to assist rural CSOs to register, enabling application forms to be found in all local languages and improving understanding of the registration process.
- Involve civil society in the discussions on amending the NPO Act.

6.2 Regarding the protection of human rights defenders

- Civil society members, journalists and human rights defenders should be provided a safe and secure environment to carry out their work.
- Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against them and bring perpetrators of such offences to justice.
- Ensure that human rights defenders are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- Senior government officials should publicly condemn instances of harassment, killing and intimidation of civil society activists and organisations.
- A consolidated process of repeal or amendment of legislation which unwarrantedly restricts the legitimate work of human rights defenders in line with the UN Declaration Human Rights Defenders should be undertaken.
- The government should end reprisals of human rights defenders and whistleblowing officials for exposing impunity, gross human rights violations and stop summary dismissals, arbitrary suspensions, transfers.
- The government should encourage the State Security agents to desist from intimidating human rights defenders.
- 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 activists in accordance with Council resolution 27.31 of the Human Rights Council as well as African Commission Res 69 & Res 189.

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

information

- Ensure freedom of expression and media freedom by bringing all national legislation into line with international standards, including application of the Model Law on Access to Information for Africa adopted by the African Commission.
- Ensure that journalists and writers, especially at the state broadcaster the South African Broadcasting Corporation, can 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.
- Amend the State Information Bill to remove unwarranted restrictions on freedom of expression, including unwarranted persecution of whistle-blowers.
- Refrain from censoring conventional media and ensure that freedom of expression is safeguarded in all forms, including the arts.

6.4 Regarding freedom of assembly

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which call for simple notification rather than explicit permission to assemble.
- In order to fully guarantee the right to freedom of assembly, the Gatherings Act should be understood by local authorities as a notification requirement and not an authorisation process.
- All demonstrators, journalists and human rights defenders detained for exercising their right to freedom of peaceful assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- All instances of extra-judicial killing and excessive force committed by security forces while monitoring protests and demonstrations should be immediately and impartially investigated with a view to bring perpetrators to book.

- Review and if necessary update existing human rights training for police and security forces with the assistance of independent nongovernmental organisations to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Senior government officials should publically condemn the use of excessive and brutal force by security forces in the dispersal of protests.
- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities.

6.5 Regarding access to UN Special Procedures mandate holders

- The should prioritise official visits with 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 Freedom of Special Rapporteur on the rights to freedom of peaceful assembly and of association.

6.6 Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with civil society organisations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy. Allow citizens to participate freely in public affairs of the country as provided by the African Charter on Human and People's Rights.
- Include civil society organizations in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society sectors.
- 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.