

The logo for ARTICLE 19, featuring the text "ARTICLE 19" in white, bold, sans-serif font, centered within a red, stylized, angular shape that resembles a folded piece of paper or a banner.

**Individual Submission by ARTICLE 19 to the UN Universal Periodic Review of the  
People's Republic of China**

*Seventeenth Session of the Working Group of the Human Rights Council, Jan-Feb 2014*

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www.article19.org

***Executive summary***

1. In this submission, ARTICLE 19 highlights the violations of the right to freedom of expression and freedom of information in China. Importantly, China has mostly failed to comply with recommendations accepted during its first UPR to strengthen and enhance protections for the cultural expression rights of ethnic minorities, and to give practical effect to the right to access government-held information on the environment. Moreover, we note that China's performance in this regard does not comply with its international human rights obligations.<sup>1</sup> We also note with concern that China has not yet ratified the International Covenant on Civil and Political Rights (ICCPR).
2. During the first session of the UPR in 2009, China accepted - or indicated that it was already working towards - the recommendations to:
  - "Strengthen the protection of ethnic minorities' religious, civil, socio-economic and political rights" (Australia);
  - "Allow ethnic minorities to fully exercise their human rights, to preserve their cultural identity and to ensure their participation in decision-making" (Austria);
  - "Continue enhancing the quality of life of its people through the enjoyment of economic, social and cultural rights and pursuant to international standards" (Nicaragua);
  - "Continue its efforts to further ensure ethnic minorities the full range of human rights including cultural rights" (Japan).
3. ARTICLE 19 observes the following trends since the first UPR:
  - The constitutional and legal framework, including media laws, fail to fully protect and promote diverse cultural expression, and the right to freedom of artistic expression.
  - Attacks and threats against cultural expression, particularly that which is critical of the State, and that of Tibetan, Uyghur and Inner Mongolian minorities.
4. Moreover, despite positive steps taken to implement the right of access to information, significant obstacles remain in respect of access to government-held information on the environment.

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<sup>1</sup> The submission is informed by the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Cultural Expression Convention), to which China is party, and the *Constitution of the People's Republic of China* (the Constitution), in particular the protections against discrimination in the enjoyment of cultural rights (Article 4), and the right to freedom of expression (Article 35).

### ***Restrictive regulatory framework on domestic and foreign cultural expression***

5. While the Constitution recognises the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits (Article 47), this is limited by what the State determines as '*conducive to the interests of the people*'. Similarly, the promotion of the development of literature and art (Article 22) is limited to those that '*serve the people and socialism*'.
6. Cultural expression is subject to extensive regulation that fails to fully protect and promote diverse cultural expression, and the right to freedom of artistic expression more broadly:
  - The Regulations on Protection of Traditional Arts and Crafts<sup>2</sup> can be interpreted narrowly to limit its protections to only mainstream or majority Chinese culture, or cultural expression that is acceptable to the State. These regulations need to be amended to protect the artistic expression of ethnic minorities.
  - The Regulations on the Administration of Audiovisual Products (RAAP)<sup>3</sup> includes many provisions that violate freedom of expression and information. Firstly, it requires all audio-visual activities to adhere to the objective of "serving the people and socialism", a broad and ambiguous term that the State may exploit to dictate what are legitimate productions and what are not. Secondly, it features a number of content-based prohibitions, including, *inter alia*: those that endanger the unity of the nation, sovereignty or territorial integrity; those that propagate cults or "superstition"; those that incite national hatred or discrimination, undermine the solidarity of nationalities, or infringe upon national customs and habits; and those that endanger public ethics or folk cultural traditions. These restrictions either do not serve legitimate aims recognised under international law or are phrased too broadly. Thirdly, it establishes a license system applicable to the publication, manufacture, reproduction, import, wholesale, retail and leasing of audiovisual products and prohibits engaging in all of these activities without permission. ARTICLE 19 observes that subjecting the entire audio-visual arts sector to a licensing regime, particularly one supplemented by extensive and vague content-based prohibitions, unjustifiably restricts the right to freedom of expression and information. The RAAP should be repealed.
  - The Regulations on the Administration of Newspaper Publishing (RANP) and the Regulations on the Administration of Periodical Publishing (RAPP) both regulate printed press in China through, amongst other means, a licensing system, content-based restrictions and defamation provisions.<sup>4</sup> ARTICLE 19 observes that international standards do not permit such extensive regulatory systems for the printed press, as such systems restrict freedom of expression and are not necessary in a democratic society. The RANP and RAPP laws should be repealed and substituted with a system of effective self-regulation.

### ***Attacks and threats against acts of cultural expression***

7. China regularly restricts the ability of domestic and foreign artists to perform and speak freely. Critical voices are met with threats and harassment, with

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<sup>2</sup> Regulations on Protection of Traditional Arts and Crafts" (Promulgated by Decree No. 217 of the State Council of the People's Republic of China on May 20, 1997).

<sup>3</sup> "Regulations on the Administration of Audiovisual Products" (No 341 Order of the State Council of the People's Republic of China.

<sup>4</sup> "Regulations on the Administration of Newspaper Publication"  
"Regulations on the Administration of Periodical Publication

artists and activists often imprisoned. The Tibetan, Uyghur and Inner Mongolian ethnic minority cultures are especially endangered in China. The ongoing crackdown against artistic dissent is not only discriminatory but has a significant chilling effect on freedom of expression in the country and furthers a culture of self-censorship in society.

#### Critical artists

8. Ai Weiwei, an outspoken critic of the Chinese government, was arrested on 3 April 2011 and kept in detention until 22 June 2011 when he was released on bail without being charged. His studio was searched and three of his colleagues were also arrested. The harassment and detention of these artists violated their human rights, in particular their right to freedom of expression, and has had a profound chilling effect on critical artistic expression in the country.
9. Poet and author Liao Yiwu spent four years in prison in the 1990s for writing critical poetry. In 2011 he was banned from leaving China to attend the Cologne Literary Festival. Yiwu received a visa for his trip and had already boarded the plane, however police officers ordered him off the plane. Yiwu managed to flee China in July 2011 and currently resides in Germany.
10. In 2009, the rock band Oasis was banned from China on the basis of their involvement in a Free Tibet concert twelve years before. The band cited that their licensing and immigration permits were reversed by the Chinese Ministry of Culture.
11. In 2010, the album *Chinese Democracy* by the rock band Guns 'N' Roses was banned from importation to China because it was critical of the Chinese government. Access to the album's website was also blocked.
12. In April 2011, musician Bob Dylan was unable to play his best-known songs after the Chinese government required a pre-approved list of intended songs from the counter-culture icon.

#### Ethnic minorities

13. In 2009, Kunchok Tsephel Gopey Tsang, editor of the Tibetan language website *Chomei* was arrested and his website blocked. He was an important activist for the preservation of Tibetan culture, providing a platform to poets and artists.
14. In 2009, Tibetan filmmaker Dhondup Wangchen was sentenced to six years' imprisonment for producing a film, *Leaving Fear Behind*, which featured Tibetans' views of the Chinese government and praise for the Dalai Lama. Wangchen was arrested just after finishing the film and was allegedly tortured in prison and condemned in a secret trial.
15. Prominent ethnic Uyghur writer Ilham Tohti has been repeatedly banned from leaving the country. In April 2010, Tohti was invited to attend a conference on Turkic culture at Ege University in Izmir, Turkey. He had his visa and travel documents approved but he was prevented from travelling at the last minute. In February 2013, a travel ban was imposed on Tohti ahead of his intended flight to the United States as a visiting scholar at Indiana University.
16. In 2009, Gheyret Niyaz, an Uyghur writer and administrator of the *Uighurbiz* website created by Ilham Tohti, was arrested. In 2010 he was sentenced to 15 years imprisonment on the grounds of "endangering state security."
17. China has identified 23 different kinds of illegal religious practices in the Xinjiang Uyghur Autonomous Region, which include letting students pray and private religious instruction. In 2009, seven students were arrested in Xinjiang for participating in a religious gathering.

18. The whereabouts of prominent Inner Mongolian human rights activist and writer, Hada, and his family remain unknown since 2010. There are fears that they may be victims of enforced disappearance. Hada and his wife owned a Mongolian bookstore, where discussions on how to preserve the Mongolian lifestyle were often held. He also founded the Southern Mongolian Democratic Alliance in 1992. Hada was arrested in 1995 and sentenced to 15 years in prison. After his arrest, ten other intellectuals were arrested and the bookstore was closed by the authorities. From what was to be his release in December 2010, Hada still has not been seen and he is believed to be serving extrajudicial detention in a secret prison. Furthermore, Hada's wife and son have gone missing leading up to what was supposed to be his release in December 2010.

#### ***Access to environmental information***

19. Since the adoption of the national right to information regulations in 2008, China has progressed in access to government-held environmental information. A significant amount of environmental information has been disclosed by the environmental agencies both proactively and upon requests. In some cities, local environmental protection bureaus have established online mechanisms to facilitate access to environmental information and the submission of information requests by the public.

20. However, there is still a wide gap between existing practices and the legal requirements under the *Regulations of the People's Republic of China on Open Government Information and Measures on Open Environmental Information*. In particular, information relating to pollutant emissions, waste disposal and list of illegally polluting enterprises is the hardest to obtain. Disclosed environmental information is often incomplete and outdated, and responses to information requests mostly exceed the stipulated response period of 15 working days. In addition, disclosure of environmental information by large enterprises is very limited, which is likely due to the lack of legal requirements on enterprises to publish information.

#### ***Recommendations***

In response to these concerns, ARTICLE 19 calls on the UN Human Rights Council to make the following recommendations to the Chinese government:

- Immediately ratify the ICCPR;
- Review all laws affecting freedom of expression for compliance with the Constitution and international standards and repeal or amend those that fail to meet these standards;
- Ensure that new laws or amendments to existing laws meet international standards on freedom of expression and that the drafting process include widespread and meaningful public consultations;
- Ensure that all restrictions on freedom of expression meet international standards and be: provided by law, pursue a legitimate aim, and be necessary in a democratic society;
- Amend Articles 22 and 47 of the Constitution that restrict protections for creative expression including art and literature;

- Refrain from arresting artists, cultural workers, political activists and human rights defenders for reasons connected to the legitimate expression of their views;
- Release individuals currently in detention for the legitimate expression of their views, and conduct full and fair investigations into the disappearances of such individuals;
- Extend official invitations to the following Special Rapporteurs and facilitate the discharge of their mandates:
  - Cultural rights
  - Freedom of peaceful assembly and of association
  - Freedom of opinion and expression
  - Human rights defenders;
- The Ministry of Environmental Protection should establish a model mechanism for the disclosure of environmental information, enhance the capacity of environmental officers through trainings, and set standards for the disclosure of enterprise environmental information.