

Dear Ms. Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,

We write to you to raise our concerns regarding the prosecution of Mr. Jang Jin-young, freelance photojournalist and its subsequent impact on independent journalism in armed conflict area, which falls within the scope of your mandate pursuant to Human Rights Council resolutions 7/36 and 52/9, among others. In this connection, we would like to bring to your attention information we have received from Mr. Jang Jin-young, based in the Republic of Korea, concerning the prosecution and criminal sentence for his alleged breach of the Passport Act.¹ The consent form of Mr. Jang is attached as Annex 1. Borami Kim is representing attorney for Mr. Jang's criminal case and the MediaReform is a Korean civil society organisation founded for the purpose of improving media legislation, media acceptance

¹ The relevant Articles of the Passport Act read:

Article 26(Penalty Provisions) Any of the following persons shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding 10 million won. <Amended on Jan. 21, 2014>

3. A person who uses a passport, etc. or visits or stays in a country or region publicly notified as a country or region where visits or sojourn is prohibited under Article 17 (2) and the main sentence of Article 17 (1) without obtaining permission (including cases applied mutatis mutandis in accordance with Article 14 (3)) under the proviso to paragraph (1) of the said Article, despite being aware of such fact.

Article 17 (Restrictions on Use of Passport) (1) When deemed necessary to suspend any visit to or sojourn in any specific country or region in order to protect the lives, physical safety and property of people against dangerous circumstances overseas prescribed by Presidential Decree, such as a natural disaster, war, internal disturbance, revolt, terror, the Minister of Foreign Affairs may restrict the use of a passport or prohibit any visit to and sojourn in the relevant country or region (hereinafter referred to as "restrictions, etc. on the use of passports") for a fixed period: Provided, That the Minister of Foreign Affairs may, if he or she deems it necessary, permit the use of a passport, visit or sojourn for any travel to be made for purposes prescribed by Presidential Decree, such as permanent residence, covering and reporting, urgent humanitarian causes, or official duties. <Amended on Mar. 23, 2013>

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campaigns, and alternative media movements. It is considered a representative media movement solidarity organisation in Korea, established on August 27, 1998 with the participation of 48 civil society organisations, media organisations and ordinary citizens. It aims to correct the media through the voluntary participation of people from all walks of life who want media reform, propose policies and alternatives for the development of the media, and create a desirable media environment.

According to the information received:

Jang Jin-young is a freelance photojournalist with seven years of experiences. Learning the outbreak of the War in Ukraine, Mr. Jang planned to cover the war at the frontline but failed to meet the requirements set forth by the Ministry of Foreign Affairs enforcing the Passport Act. The Ministry of Foreign Affairs had placed a total ban on even covering visits to Ukraine for public interests from the onset of the war to March 18, 2022. Since then, the Ministry announced its policy that traveling to Ukraine for the purpose of covering or reporting will be permitted not to 'journalists' but to a small number of media outlets, particularly those who assign exclusive correspondents covering the Ministry. Furthermore, even the coverage was allowed to a very small number of media outlets is not free coverage, but conditioned to (1) employees of media outlets which have exclusive correspondents for the Ministry of Foreign Affairs (if there are multiple media outlets wishing to visit for the same period, the applicant shall be determined by coordinating among the media outlets in advance), (2) travelling region shall be limited to Chernivtsi Oblast, where the temporary Korean embassy is located (Chernivtsi Oblast is far away from the place where the conflict occurred at the initial stage), (3) within 3 days of the visit period (it is not possible to cover the conflict area within 3 days),

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(4) limited to 4 people or less, and (5) subsequent to receiving the application for permission, review by the relevant ministries, and deliberating and voting by the Passport Policy Review Committee will proceed, which takes at least one week before being notified of the decision (in a situation where an urgent coverage and reporting is required, this period of minimum one week is equivalent to banning coverage).

Facing criticism over the permit-policy on coverage of the Ukraine war, the Ministry of Foreign Affairs announced that it mitigated the guidelines on April 25, 2022 that increase the duration of visits from three days to five days, the number of visitors to no more than six. This could not be considered mitigation as it was impossible to cover the conflict zone, even under the mitigated permit system of the Ministry of Foreign Affairs. In a situation where leading foreign media outlets were reporting without time limits or place of visit, these restrictions on Korean journalists have become the biggest reason why it is not possible to cover conflict zones.

Against this backdrop, Mr. Jang flew to Poland on March 1, 2022 and entered Ukraine via land route. Since the outbreak of the war in Ukraine on February 21, photos and videos of the scene covered by foreign journalists had been broadcasted in real time, but in the case of South Korea, it was not even possible to cover the site due to the restrictions of the Passport Act. Mr. Jang took photos of Ukraine war from March 5 to March 20, 2022 and his photos showing the horrors of the war were featured in news reports of *Sisain* and *Danbi News*. At the time of Mr. Jang's on-the-ground reporting in Ukraine, the Ministry of Foreign Affairs had not granted any permission for journalists who wished to cover the war in Ukraine.

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On March 28, 2023, the *Uijeongbu* District Court's *Goyang* Branch ordered Mr. Jang (then ‘the accused’) a fine of 5,000,000 KRW for the reason that “[N]o person shall use his passport or visit or stay in a country or region where restricted from visiting or staying without the permission of the Minister of Foreign Affairs. The accused was aware of the fact that Ukraine was designated as a restricted area due to the outbreak of war in Ukraine by the official notification of the Ministry of Foreign Affairs No. 20022-2, “restrictions on the use of passports or prohibition of visits and stays, etc.” February 12, 2022. Nonetheless, the accused did not obtain permission from the Minister of Foreign Affairs to take photographs of the war situation and visited and stayed in Ukraine from March 5, 2022 to March 20, 2022,” and the court ruled Mr. Jang violated Article 27(3) and Paragraph 1 of Article 17 of the Passport Act. Mr. Jang could not accept the ruling of the above summary order, so he requested a formal trial, which is currently pending as the case of No. 2023 GoJung250 in the *Uijeongbu* District Court. At the same time, Mr. Jang filed a petition with the court to request for adjudication of constitutionality of the relevant provisions to the Constitutional Court.

We are more concerned that even though the Constitution of the Republic of Korea prohibits license of the press or the publication or prior restriction on the free speech, the application of the provisions of the Passport Act operates as *de facto* license system or prior restriction for covering armed conflict area. Covering and reporting on the war in Ukraine is also integral to freedom of expression, which falls under the essential aspect of freedom of speech and the press, yet the Ministry of Foreign Affairs interfered with the contents of media by imposing a blanket ban on on-the-scene coverage for about one month from the outbreak of the war to March 18, 2022. Since then, the Ministry had arbitrarily decided who might cover the war deciding the areas and duration of coverage, the number of reporters to enter, and which media

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outlet to go. The Ministry of Foreign Affairs have made it virtually impossible to cover the war by placing arbitrary conditions, and decided which media outlet to visit, which results in denying any application by independent producers or journalists or freelancers. This practice has brought chilling effect on the majority of journalists. In other words, in terms of freedom of expression, this is not an issue of content-neutral travel permit, but rather a "permission or licensing" prohibited by Paragraph 2, Article 21 of Korean Constitution as it has the effect of content regulation that determines whether or not our journalists can cover content about the war in Ukraine.

We wish to express our grave concern over the prosecution and criminal sentence of Mr. Jang, particularly considering that the Passport Act is operated as permit-based system for covering and reporting war, which inevitably brings chilling effect over the work of journalists, as well as interfering with the public's right to have access to information, thereby violating Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which the Republic of Korea acceded to in 1991. The relevant provisions of the Passport Act do not comply with permissible grounds for restricting freedom of expression under international human rights standards. Even considering the legislative background that Article 17 of the Passport Act was enacted in 2007 with the aim of protecting the lives, bodies and property of citizens from the crisis outside the country, and ultimately fulfilling the obligation of the State to guarantee the fundamental rights of its citizens set forth in Article 10 of the Constitution and its obligation to protect its citizens abroad after the "Afghan Kidnapping Incident" in 2007, when 23 Korean nationals who visited Afghanistan for missionary purposes were abducted by Taliban militants, two were killed during detention, and the remaining 21 were released after 42 days, the said provision does not satisfy the proportionality principle to restrict the right

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under Article 19 of ICCPR. Moreover, the Ministry of Foreign Affairs' guidelines on the application for traveling abroad for the purpose of covering and reporting are discouraging independent journalists who want to cover conflict areas by accepting only applications who are employed by major media outlets. This is a clear failure of the government to discharge its positive obligation to promote the right to freedom of expression by encouraging diverse and independent journalism.

The Republic of Korea's disregard for international human rights law and standards, specifically in the case concerning the prosecution and criminal sentence of Mr. Jang, require the intervention of the Special Rapporteur, particularly on the following matters, inter alia:

1. To acknowledge the Republic of Korea's violations and demand measures aimed at providing redress for Mr. Jang;
2. To call on the Republic of Korea to respect international human rights law, particularly its obligations, both negative and positive, under the ICCPR, with regard to freedom of opinion and expression;
3. To call on the Republic of Korea to drop the criminal charge against Mr. Jang and to cease policy of criminalizing journalists, particularly independent and individual journalist, who travels without permission of the Ministry of Foreign Affairs;
4. To call on the Republic of Korea to repeal or to amend Article 17 under the Passport Act to fully comply with its obligations under ICCPR and other international human rights instruments; and,

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5. To call on the Republic of Korea to promote journalism in armed conflict areas, as discussed in the Special Rapporteur's recent report to the General Assembly of the United Nations on August 12, 2022.

Thank you for your attention to this matter.

Yours sincerely,

Borami Kim

Attorney at Law, Law office Dike

Annex 1: Consent Form

Annex 2: Petition for request for adjudication of the constitutionality of the Passport Act

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