



EMBASSY OF THE REPUBLIC OF KOREA AND
PERMANENT MISSION TO THE INTERNATIONAL ORGANIZATIONS
THE HAGUE

MNT - 10007

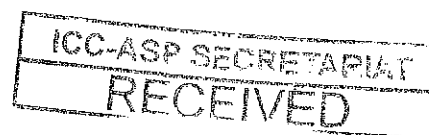
The Embassy of the Republic of Korea in the Kingdom of the Netherlands presents its compliments to the International Criminal Court and has the honour to refer to the latter's letter ICC-ASP/S/PA/07 dated 9 April 2010.

The Embassy has further the honour to submit information related to measures undertaken in respect of implementing legislation of the Rome Statute of the International Criminal Court attached hereto.

The Embassy of the Republic of Korea in the Kingdom of the Netherlands avails itself of this opportunity to renew to the International Criminal Court the assurances of its highest consideration.

The Hague, 11 May 2010

- Attachment: 1. Information related to questionnaire
2. Implementing Act of Korea



18 MAY 2010

ASP/2010/231

**Answers of the Republic of Korea
to the Implementing Legislation Questionnaire for States Parties**

1. Has your Government adopted any national legislation implementing the Rome Statute (the Statute)?

- Yes. The Korean Government has adopted the 「Act on the Punishment of Crimes within the Jurisdiction of the International Criminal Court」 in December 2007 as an implementing legislation for the Rome Statute.

IF YES

Part B

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

- The aforementioned legislation was drafted as special implementing legislation.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

- The aforementioned implementing legislation incorporates substantive crimes in the legislation itself.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

- Yes. The aforementioned implementing legislation incorporates through reference to the pre-existing national legislations on extradition and mutual legal assistance. The pre-existing legislations contain provisions that cover all modes of cooperation as specified under Part 9 of the Statute.

8. Does the implementing legislation designate a channel of communication with the Court?

- By reference to the pre-existing national legislations on extradition and mutual legal assistance, the communication with the Court is to be made through the Ministry of Foreign Affairs and Trade. The actual execution of requests by the Court would be handled by the Ministry of Justice, and in urgent cases of mutual legal assistance, the Ministry of Justice may directly communicate with the Court. / The End /

『Act on the Punishment, etc. of Crimes within the Jurisdiction of the
International Criminal Court』

Part I General provisions

Article 1 (Purpose)

The purpose of this Act is to guarantee the respect for the dignity and value of humanity and the enforcement of international justice by providing for offences under the law of Korea corresponding to offences within the jurisdiction of that Court and by providing for procedures effecting the cooperation between the Republic of Korea and the International Criminal Court.

Article 2 (Definitions)

The Terms used in this Act are defined as follows:

1. “Crimes of genocide, etc.” refers to any of one the crimes as defined in Articles 8 to 14 of this Act;
2. The “ICC” means the International Criminal Court established by the Statute of the International Criminal Court (hereinafter referred to as the “ICC Statute”), done at the Rome Diplomatic Conference on 17th July 1998 and entered into force on 1st of July 2002;
3. “Geneva Conventions” refers collectively to the “Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field” (The First Geneva Convention), “Geneva Convention of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea” (The Second Geneva Convention), “Geneva Convention of 12 August 1949 for relative to the Treatment of Prisoners of War” (The Third Geneva Convention), “Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War” (The Fourth Geneva Convention);
4. “Foreigner” means a person who is not a registered national of the Republic of Korea;

5. "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
6. "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law;
7. "Persons who are to be protected under international humanitarian law" mean persons falling under any of the followings.
 - A. In an international armed conflict: persons protected for the purposes of the Geneva Conventions and of the Protocol Additional to the Geneva Conventions (Protocol I), namely the wounded, the sick, the shipwrecked, prisoners of war and civilians;
 - B. In an armed conflict not of an international character: the wounded, the sick, the shipwrecked as well as persons taking no active part in the hostilities who are in the power of the adverse party;
 - C. in an international armed conflict and in an armed conflict not of an international character: members of armed forces and combatants of the adverse party, both of whom have laid down their arms or have no other means of defence.

Article 3 (Scope of application)

- (1) This Act applies to acts committed in the territories of the Republic of Korea by a national of the Republic of Korea or a foreigner.
- (2) This Act applies to acts committed outside the territories of the Republic of Korea by a national.
- (3) This Act applies to acts committed on board vessels or aircrafts of the Republic of Korea located outside the territories of the Republic of Korea by a foreigner.
- (4) This Act applies to acts committed against the Republic of Korea or its nationals outside the territories of the Republic of Korea by a foreigner.
- (5) This Act applies to foreigners who are present in the territories of the Republic of Korea after having committed the crimes of genocide, etc. outside the territories of the Republic of Korea.

Article 4 (Acting upon orders)

Whoever commits crimes of genocide, etc. in execution of an order by the Government or a superior without realizing that the order is unlawful shall not be punished so far as there is a justifiable cause in not realizing the unlawfulness of the order.

Article 5 (Responsibility of military commanders and other superiors)

A military commander (the term “commander” hereinafter includes any person effectively acting as a commander) or a superior of a group or an organization (the term “superior” hereinafter includes any person effectively acting as a superior) who omits to prevent a subordinate under his or her effective command and control from committing the crimes of genocide, etc. shall be punished in the same way as a perpetrator of the offence committed by that subordinate.

Article 6 (Non-applicability of statute of limitations)

Notwithstanding the Code of Criminal Procedure Articles 249 to 253, the Military Court Act Articles 291 to 295, and the Criminal Code Articles 77 to 80, the crimes of genocide, etc. shall not be subject to any statute of limitations.

Article 7 (Ne bis in idem)

No person who has already been convicted or acquitted by the ICC shall be tried under this Act.

Part II Crimes within the jurisdiction of the ICC

Article 8 (Genocide)

(1) Whoever, with the intent of destroying as such, in whole or in part, a national, racial, ethnical or religious group (within this Article, hereinafter referred to as “group”) as such, kills members of the group shall be punished by death or life imprisonment, or imprisonment for not less than seven years.

(2) Whoever commits any of the following acts with the same intent as stated in Paragraph (1) of this Article shall be punished by life imprisonment or imprisonment for not less than five years.

1. Causing serious bodily or mental harm to members of the group;
2. Deliberately inflicting on the group severe conditions of life calculated to bring

about its physical destruction;

3. Imposing measures intended to prevent births within the group;

4. Forcibly transferring children of the group to another group.

(3) Where the perpetrator causes the death of a person through an offence specified in Paragraph (2), the punishment shall be the same as specified in Paragraph (1).

(4) Whoever incites others to commit any of the crimes under Paragraph (1) or (2) shall be punished by imprisonment for not less than five years.

(5) Whoever attempts to commit any of the crimes under Paragraph (1) or (2) shall be also punished.

Article 9 (Crimes against humanity)

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack, kills a person shall be punished by death or life imprisonment, or imprisonment for not less than seven years.

(2) Whoever, as part of a widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack, commits any one of the following acts shall be punished by life imprisonment or imprisonment for not less than five years.

1. The intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

2. Enslavement;

3. Deportation or forcible transfer of a person lawfully present in an area to another State or location in violation of international law;

4. Imprisonment or other severe deprivation of physical liberty in violation of international law;

5. Torture of a person in the custody or under the control of the perpetrator by inflicting upon that person severe physical or mental pain or suffering;

6. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violation of comparable gravity;

7. Persecution against any identifiable group or collectivity by depriving such group or collectivity of fundamental human rights or by substantially restricting the same, on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are recognized as impermissible under international law;

8. Enforced disappearance of a person, by any of the following acts with the authorization, support or acquiescence of, a State or a political organization, with the intent of removing him or her from the protection of the law for a prolonged period of time.

A. Arresting, detaining, abducting (within this Subparagraph hereinafter referred to as “arrest, etc.”) that person, followed by a refusal to give information on that person’s arrest, etc., identity, fate, and whereabouts or by giving false information thereon;

B. Refusing to give information or giving false information referred to in Subparagraph A in violation of a legal duty.

9. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to physical or mental health.

(3) Whoever commits any of the crimes under Paragraph (1) or (2) with the intent of maintaining an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups shall be punished pursuant to Paragraph (1) or (2).

(4) Where the perpetrator causes the death of a person through an offence pursuant to Paragraph (2) or through an offence pursuant to Paragraph (3) (of committing crimes under Paragraph (2)), the punishment shall be the same as specified in Paragraph (1).

(5) Whoever attempts to commit any of the crimes under Paragraphs (1) or (2) shall be also punished.

Article 10 (War crimes against persons)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character (excluding situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature, hereinafter the same) kills a person who is to be protected under international humanitarian law shall be punished by death or life imprisonment, or imprisonment for not less than seven years.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by life imprisonment or imprisonment for not less than five years.

1. Taking hostage a person who is to be protected under international humanitarian law;

2. Causing a person substantial physical or mental harm or suffering, especially by torturing or mutilating that person;

3. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization against a person who is to be protected under international humanitarian law;

(3) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by imprisonment for not less than three years.

1. Deportation or forcible transfer of a person, who is to be protected under international humanitarian law, to another State or location in violation of international law;

2. Imposition on or execution of a sentence in respect of a person who is to be protected under international humanitarian law without that person having been sentenced in a fair and regular trial;

3. Subjecting a person who is to be protected under international humanitarian law to the risk of death or of serious injury to health by carrying out medical or scientific experiments on such a person, being a person who has not previously given his or her voluntary and express consent, or where the experiments concerned are neither justified by medical reasons nor carried out in his or her interest;

4. Wounding a member of the adverse armed forces or a combatant of the adverse party after the latter has surrendered unconditionally or is otherwise placed *hors de combat*;

5. Conscripting children under the age of fifteen years into the armed forces or in armed groups, or enlisting them in the armed forces or in armed groups, or using them to participate actively in hostilities;

(4) Whoever in connection with an international armed conflict or with an armed conflict not of an international character treats a person who is to be protected under international humanitarian law in a gravely humiliating or degrading manner shall be punished by imprisonment for not less than one year.

(5) Whoever in connection with an international armed conflict commits any of the following acts shall be punished by imprisonment for not less than three years.

1. Unlawfully confining or continuing to confine a person who is to be protected under international humanitarian law to a certain location;

2. Transferring, as a member of an Occupying Power, parts of its own civilian population into the occupied territory;

3. Compelling a person, who is to be protected under international humanitarian law to serve in the forces of a hostile Power;

4. Compelling a national of the adverse party to take part in the operations of war directed against his or her own country;

(6) Where the perpetrator causes the death of a person through an offence pursuant to Paragraphs (2), (3), or (5), the punishment shall be death, life imprisonment, or imprisonment for not less than seven years.

(7) Whoever attempts to commit any of the crimes under Paragraphs (1) to (5) shall be also punished.

Article 11 (War crimes against property and other rights)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character pillages or, unless this is imperatively demanded by the necessities of the armed conflict, otherwise extensively destroys, appropriates or seizes property of the adverse party in violation of international law shall be punished by life imprisonment or imprisonment for not less than three years.

(2) Whoever in connection with an international armed conflict and contrary to international law declares the rights and actions of all, or of a substantial proportion of, the nationals of the hostile party abolished, suspended or inadmissible in a court of law shall be punished by imprisonment for not less than three years.

(3) Whoever attempts to commit any of the crimes under Paragraphs (1) to (2) shall be also punished.

Article 12 (War crimes against humanitarian operations and emblems)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by imprisonment for not less than three years.

1. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under international law of armed conflict;

2. Intentionally directing attacks against personnel, buildings, material, medical units, transport of medical units, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character makes improper use of the distinctive emblems of the Geneva Conventions, of the flag of truce, or of the flag or military insignia or uniform of the enemy or of the United Nations, resulting in a person's death or serious personal injury shall be punished to following distinctions.

1. Where the perpetrator causes the death of a person, the punishment shall be death, life imprisonment, or imprisonment for not less than seven years;

2. Where the perpetrator causes serious personal injury to a person, the punishment shall be life imprisonment or imprisonment for not less than 5 years.

(3) Whoever attempts to commit any of the crimes under Paragraphs (1) to (2) shall be also punished.

Article 13 (War crimes of using prohibited methods of warfare)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by life imprisonment or imprisonment for not less than three years.

1. Directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

2. Directing attacks against civilian objects, namely buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, or against undefended towns, villages, dwellings or buildings, or against works and installations containing dangerous forces such as a dam.

3. Launching an attack with the knowledge that such attack would cause death or injury to civilians or damage to civilian objects clearly excessive in relation to the concrete and direct overall military advantage anticipated;

4. Using a person who is to be protected under international humanitarian law as a shield to restrain a hostile party from undertaking operations of war against certain targets;

5. Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival or by impeding supplies of such objects in violation of international humanitarian law,

6. Threatening or ordering, as a commander, that no quarter will be given;

7. Treacherously killing or wounding in violation of international law individuals belonging to the hostile nation or army.

(2) Where the perpetrator causes the death of a person through an offence pursuant to Subparagraphs 1 to 6 under Paragraph (1), the perpetrator shall be punished pursuant to following distinctions.

1. Where the perpetrator causes the death of a person, the punishment shall be death, life imprisonment, or imprisonment for not less than seven years;

2. Where the perpetrator causes serious personal injury to a person, the punishment shall be life imprisonment or imprisonment for not less than 5 years.

(3) Whoever in connection with an international armed conflict or with an armed conflict not of an international character launches an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive to the concrete and direct overall military advantage anticipated shall be punished by imprisonment for not less than three years.

(4) Whoever attempts to commit any of the crimes under Paragraphs (1) to (3) shall be also punished.

Article 14 (War crimes of employing prohibited means of warfare)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character employs any of the followings shall be punished by life imprisonment or imprisonment for not less than five years.

1. Poison or poisoned weapons;

2. Biological or chemical weapons;

3. Bullets which expand or flatten easily in the human body.

(2) Where the employment under Paragraph (1) results in death or serious injury to a person, or harm to property, the perpetrator shall be punished by death, life imprisonment, or by imprisonment for not less than 7 years.

(3) Whoever attempts to commit any of the crimes under Paragraphs (1) shall be also punished.

Article 15 (Violation of the duty of supervision)

(1) A military commander or a superior of a group or an organization who fails to take all necessary measures to prevent or repress a subordinate under his or her effective

command and control from committing the crimes of genocide, etc. shall be punished by imprisonment up to seven years.

(2) Where a military commander or a superior of a group or organization negligently fails to take all necessary measures, the punishment shall be imprisonment up to 5 years.

(3) A military commander or a civilian superior who fails to draw attention of the authority responsible for the investigation or prosecution to the commission of the crimes of genocide, etc. by his or her subordinate shall be punished by imprisonment up to five years.

Article 16 (Offences against the administration of justice)

(1) Whoever commits any of the following acts in connection with investigation, prosecution, or trial conducted by the ICC shall be punished by imprisonment for up to five years or fine of up to 15 million Won (Korean currency) or both.

1. Presents false evidence;
2. Obstructing or interfering with the attendance or testimony of a witness, or collection or submission of evidence by assault or intimidation;
3. Giving or promising to give money or other financial benefits to a witness with the intent to obstruct or interfere with the attendance or testimony of that witness, or collection of evidence from that witness, or submission of evidence by that witness;
4. Receiving, asking or agreeing to receive money or other financial benefits by the witness under Subparagraph 3.

(2) Paragraph (1) also applies to domestic proceedings initiated at the request or demand from the ICC.

(3) Whoever commits any of the offences under the Criminal Code Articles 152, 154, or 155 Paragraph (1) to (3) in connection with the investigation, prosecution, or trial conducted by the ICC shall be punished as prescribed in the applicable provision. Where this Paragraph applies, the Criminal Code Article 155 Paragraph (4) shall not apply.

(4) Whoever commits any of the offences under the Criminal Code Articles 136, 137, or 144 in connection with the investigation, prosecution, or trial conducted by the ICC shall be punished as prescribed in the applicable provision. Employees of the ICC shall be deemed to be government officials as prescribed in the applicable provision.

(5) Whoever commits the offence under the Criminal Code Article 133 in connection with the investigation, prosecution, or trial conducted by the ICC shall be punished as

prescribed in that provision. Employees of the ICC shall be deemed to be government officials as prescribed in that provision.

(6) The term “Employees of the ICC” as used in this Article means persons discharging functions of the ICC pursuant to the ICC Statute including the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, and the Deputy Registrar.

Article 17 (Non-applicability of certain provisions barring prosecution)

The prosecution of the crimes of genocide, etc. pursuant to this Act shall not be barred by absence of a formal accusation or by the explicit objection to prosecution by the victim.

Article 18 (Reference to the Elements of Crimes)

Where necessary in the application Articles 8 to 14 of this Act, the Elements of Crimes adopted by the Assembly of States Parties on 9th September 2002 pursuant to the ICC Statute Article 9 may be referenced.

Part III Cooperation with the ICC

Article 19 (Applicability of the 『Act on Extradition』)

(1) The provisions of the 『Act on Extradition』 shall apply *mutatis mutandis* to the surrender of persons. Where there is conflict between the applicable provisions of the 『Act on Extradition』 and the ICC Statute, the latter shall prevail.

(2) When applying the 『Act on Extradition』 pursuant to Paragraph (1), the terms “Requesting State” and “Extradition Treaty” as used in the 『Act on Extradition』 shall be read as the “ICC” and the “ICC Statute” respectively.

Article 20 (Applicability of the 『Act on the Mutual Legal Assistance in Criminal Matters』)

(1) The provisions of the 『Act on the Mutual Legal Assistance in Criminal Matters』 shall apply *mutatis mutandis* to the international cooperation executed pursuant to the request from the ICC or request to the ICC in connection with the investigation, prosecution, or trial conducted by the ICC. Where there is conflict

between the applicable provisions of the 『Act on the Mutual Legal Assistance in Criminal Matters』 and the ICC Statute, the latter shall prevail.

(2) When applying the 『Act on the Mutual Legal Assistance in Criminal Matters』 pursuant to Paragraph (1), the terms “Foreign State” and “Mutual Legal Assistance Treaty” as used in the 『Act on the Mutual Legal Assistance in Criminal Matters』 shall be read as the “ICC” and the “ICC Statute” respectively.

Annex

Article 1 (Entry into force)

This Act shall enter into force on the day of its promulgation.

Article 2 (Amendment to other Acts)

(1) The 『Act on Protection of Persons Giving Information on Certain Crimes』 shall be amended as follows:

The following Subparagraph D shall be inserted under Paragraph 1 of Article 2.

D. Offences as proscribed under the 『Act on the Punishment, etc. of Crimes within the Jurisdiction of the International Criminal Court』 Articles 8 to 16.

(2) The 『Act on Regulation and Punishment of Concealing Criminal Proceeds』 shall be amended as follows:

Words “offences as proscribed under the 『Act on the Punishment, etc. of Crimes within the Jurisdiction of the International Criminal Court』 Articles 8 to 16” shall be inserted after the words “offences proscribed under the 『Act on the Enhancement of Punishment, etc. for Certain Economic Crimes』 Articles 4”.