

# **ACT ON THE PUNISHMENT OF CRIMES WITHIN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT**

Act on the Punishment of Crimes within the Jurisdiction of the International Criminal Court

Enacted on December 21, 2007 Act # 8719

Chapter 1 General Provision

## **Article 1 (Purpose)**

The purpose of the Acts is to punish crimes within the jurisdiction of the International Criminal Court in accordance with the Rome Statute of the International Criminal Court to respect dignity and value of mankind and realize justice of international community and set procedures of cooperation between the Republic of Korea and the International Criminal Court.

## **Article 2 (Definition) Definitions of terms used in this Act shall be as follows:**

1. "Genocide" means crimes that are listed in Article 8 through 14.
2. "International Criminal Court(hereinafter referred to as "the Court")" means a court that was established in accordance with the Rome Statute of the International Criminal Court(hereinafter referred to as "International Criminal Court Statue"), which was adopted at the UN diplomatic conference in Rome, Italy, on July 17 1998 and came into force on July 1 2002.
3. "Geneva Convention" means "First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field"(revised on August 12, 1949), "Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea" (revised on August 12, 1949), "Third Geneva Convention relative to the Treatment of Prisoners of War" (revised on August 12, 1949) and "Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War" (revised on August 12, 1949).
4. "Foreigner" means any person who does not possess the nationality 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 conceive woman forcibly or unlawfully confine a woman with forced pregnancy to maintain the pregnancy with the intent of affecting the ethnic composition of any population.

7. "Any person who is protected by the international law on humanity" means any of the following:

a. Any wounded, sick, refuge, hostage, or civilian who is protected by Geneva Convention and Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts b. Any person who is under effective control of concerned person of international conflicts and does not directly involve in any hostile act against the wounded, sickness or refuge in non-international armed conflict. c. A member of hostile army or combatants who surrenders or lose ability to defense in international or non-international armed conflicts.

### **Article 3 (Application)**

This act shall apply to any Korean national or foreigner who commits a crime stated in this Act within the territory of the Republic of Korea. This act shall apply to any Korean national who commits a crime stated in the Act outside the territory of the Republic of Korea. This Act shall apply to any foreigner who commits a crime stated in the Act in a vessel or aircraft of the Republic of Korea, outside the territory of the Republic of Korea.

This Act shall apply to any foreigner who commits a crime stated in this Act against the Republic of Korea or its people outside the territory of the Republic of Korea.

This Act shall apply any foreigner who commits crimes such as genocide outside the territory of the Republic of Korea and stays in the territory of the Republic of Korea.

### **Article 4 (Superior Orders)**

If any person who is under legal obligation to obey orders of the Government or the superior commits genocide or other crimes against humanity without knowing that the order was unlawful and have justifiable reason for not knowing this, he or she shall not be punished.

Orders to commit crimes of Article 8 or Article 9 are manifestly unlawful in case of paragraph (1).

### **Article 5 (Responsibility of Commanders and Other Superiors)**

A military commander (includes any person who is effectively acting as a military commander. Hereafter, the same applies.) or superior of a group or organization (includes any person who is effectively exercising an authority of superior. Hereafter, the same applies.) shall be subject to punishment that provided for in each such article, if he or she failed to take all necessary and reasonable measures within his or her power to prevent a subordinate under his or her effective authority from committing crimes such as Genocide even though he or she has already known that the forces were committing or about to be committed.

### **Article 6 (Non-applicability of Statute of Limitations)**

Genocide and other crimes shall not be subject to any prescription of a public prosecution in Article 249 through 253 of Criminal Procedure Act and Article 291 through 295 of Military Law and any statute of limitations in Article 77 through 80 of the Criminal Act.

### **Article 7(Judgment of acquittal)**

In case where the Court already made final judgment of conviction or sentence, the case shall be declared to be dismissed by judgment.

## **Chapter 2 Punishment of Crimes within the jurisdiction of the Court**

### **Article 8 (Genocide)**

Any person who kills a member of a national, ethnical, racial or religious group with the intent to destroy, in whole or in part, shall be punished by capital punishment, imprisonment for life or no less than 7 years. For the purpose of paragraph (1), any person who commits any of the following acts shall be subject to imprisonment for life or no less than 5 years.

1. The act of causing serious physical or mental harm to a member or members of the group.
2. The act of inflicting on the group conditions of life deliberately calculated to bring about its physical destruction in whole or in part.
3. The act of imposing measures intended to prevent births within the group.
4. The act of transferring children of the group forcibly to another group. Any person who causes a death with any act stipulated in paragraph (2) shall be subject to the punishment provided in Article 1.

Any person who instigates offences in paragraph (1) and (2) shall be subject to imprisonment for no less than 5 years.

Any person who attempts a crime in paragraph (1) and (2) shall be punished.

### **Article 9 (Crimes against humanity)**

Any person who kills anyone by committing widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack shall be subject to capital punishment, imprisonment of life or no less than 7 years. Any person who commits any of the following acts in pursuant to or in furtherance of a State or organizational policy to commit widespread or systematic attack directed against any civilian population shall be subject to imprisonment of life or no less than 5 years.

1. Deliberately inflicting on the group conditions of life by depriving access to food and medicine, calculated to bring about the destruction of part of a population
2. Enslaving other person
3. Displacing or transferring population forcibly from the area in which they are lawfully present to other area, without grounds permitted under the International Criminal Court Statue

4. Imprisoning or severely depriving of physical liberty in violation of fundamental rules of the International Criminal Court Statute

5. Inflicting severe physical, mental pains or suffering intentionally upon a person in the custody in violation of fundamental rules of the International Criminal Court Statute without any justifiable reason

6. Committing sexual violence such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

7. Persecuting or restricting basic humane rights of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law

8. Committing any of following acts with intent to removing a person or persons from the protection of the law for a prolonged period of time with the authorization, support or acquiescence.

a. Refusing to give information or providing wrong information on the fate or whereabouts of persons after the arrest, detention or abduction of the persons (hereafter `the arrest and others')

b. Any refusal by a person who is obliged to give information stated in Item a to give information or provide wrong information.

9. Inflicting physical, mental pains or suffering intentionally upon a person with any method not mentioned in subparagraph 1 through 8. Any person who commits any act referred in paragraph (1) or (2) in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and commits with the intention of maintaining that regime shall be subject to punishment that provided in each such paragraph.

Any person who commits any act referred in paragraph (2) or (3) (limited to acts in paragraph (2)) and results in a death shall be subject to punishment that provided in Paragraph 1.

Any person who attempts a crime in paragraph (1) through (3) shall be punished.

## **Article 10 (War crime against humanity)**

Any person who kills a person under the protection of international law on humanity related to international or non-international armed conflicts (Domestic disturbance or tension such as riots or scattered violence in local areas are excluded; hereinafter the same shall apply) shall be subject to capital punishment, imprisonment for life or no less than 7 years.

Any person who commits any following act related to international or non- international armed conflicts shall be subject to imprisonment for life or no less than 5 years.

1. Taking hostage of a person under the protection of the International Criminal Court Statute
2. Intentionally causing great suffer, or serious injury to body or to mental or physical health by torturing or mutilating any person under the protection of the International Criminal Court Statute on humanity
3. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence to any person who is protected by the International Criminal Court Statute on humanity.

Any person who commits any of following acts related to international or non- international armed conflict shall be punished by imprisonment for no less than 3 years.

1. Deporting or displacing a person under protection of the International Criminal Court Statute on humanity.
2. Passing of sentences or carrying out of executions to a person under protection of the International Criminal Court Statute on humanity without previous judgment pronounced by a regularly constituted court.
3. Subjecting persons under protection of international law on humanity to medical or scientific experiments of any kind which are neither justified by the medical treatment of the

person concerned nor carried out without his or her voluntary prior consent, and which cause death to or seriously dangers to the health of such person or persons;

4. Killing or wounding any individual belonging to the hostile army or a combatant who has surrendered at discretion or having no longer means to defend.

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

Committing outrages upon personal dignity, in particular humiliating and degrading treatment against a person related to international or non-international conflicts shall be punished by imprisonment for no less than 1 year. Any person who commits any of following acts related to international armed conflicts shall be punished by imprisonment for no less than 3 years.

1. Confining a person under the protection of international law on humanity without justifiable reason.

2. Transferring parts of own civilian population into the occupied territory

3. Compelling a person under protection of the International Criminal Court Statue on humanity to serve in the army of hostile nation

4. Compelling the nationals of the hostile party to take part in the operations of war directed against their own country

Any person who commits a crime in paragraph (2), (3) or (5) and results in a death shall be subject to capital punishment, imprisonment for life or no less than 7 years.

Any person who attempts a crime in paragraph (1) through (5) shall be punished.

Article 11 (War crime related to property and right)

Any person who destroys or seizes the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of international or non- international conflicts shall be punished by imprisonment for life or no less than 3 years.

Any person who declares abolished, suspended, or inadmissible in a court of law the rights and the actions of the nationals of the hostile party shall be subject to imprisonment for no less than 3 years.

Any person who attempts a crime in paragraph (1) or (2) shall be punished.

Article 12 (War crime against humanitarian activity or distinctive emblems)

Any person who commits any of following acts described in subparagraph related to international or non-international armed conflicts shall be under imprisonment for no less than 3 years.

1. Any act of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the international law, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict
2. Any act of intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law

Any person who made improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury shall be punished as followings.

1. Any person who resulted in death shall be under capital punishment or imprisonment for no less than 7 years.
2. Any person who resulted in serious personal injury shall be under imprisonment for life or no less than 5 years.

Any person who attempted a crime in paragraph (1) or (2) shall be punished.

#### Article 13 (War crime using forbidden method)

Any person who commits any act of followings related to international or non- international conflicts shall be punished with imprisonment for life or imprisonment for no less than 3 years.

1. Any act of intentionally directing attacks against the civilian population as such or against individual civilian not taking direct part in hostilities;
2. Any act of intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
3. Any act of intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated
4. Any act of utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
5. Any act of intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;
6. Any act of directing or coercing to kill enemy combatant without exception as a commander of army
7. Any act of killing or inflicting hostile army or combatant adversary with act of Treachery forbidden in the international law

Any person who commits crime in subparagraph 1 through 6 of paragraph (1), resulting in death and serious injuries to a person who is protected by international law on humanity shall be punished as followings.

1. Any person who resulted in death shall be under capital punishment or imprisonment for no less than 7 years.

2. Any person who resulted in serious personal injury shall be under imprisonment for life or no less than 5 years.

Any person who intentionally launched 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 in relation to the concrete and direct overall military advantage anticipated shall be under imprisonment for no less than 3 years.

Any person who attempts a crime in paragraph (1) or (3) shall be punished.

#### Article 14 (War crime using forbidden weapon)

Any person who uses any of following weapons related to international or non- international armed conflicts shall be subject to punishment of life or no less than 5 years.

1. Poison(poison) or poisoned weapon(poisoned weapon)
2. Biological or chemical weapon
3. Bullets which expand or flatten easily in the human body,

Any person who causes damages of other's life, physical health and property shall be under capital punishment, imprisonment for life or imprisonment for no less than 7 years.

Any person who attempts a crime in paragraph (1) shall be punished.

#### Article 15 (Negligence by commanders or other superiors)

Any person who fails to prevent or stop genocide or other crimes committed by a subordinate under his or her effective command or control, as a military commander or superior of a group or institution, shall be under imprisonment for no more than 7 years.

Any person who commits an activity in paragraph (1) by negligence shall be under imprisonment for no more than 5 years.

Any person who does not report that subordinates under his or her effective command or control commits genocide or other crimes, as a military commander or superior of a group or institution, shall be under imprisonment of no more than 5 years.

#### Article 16 (Obstruction of Justice)

Any person who falls under the causes determined by following subparagraph related to the cases that are investigated or at trial at the International Criminal Court, shall be punished by imprisonment for no more than 5 years or by a fine not more than 15 million won or may be punished by both.

1. Any person who presents false evidence

2. Any person who use the force or intimidation to prevent the attendance or testimony of any witness or person of reference in an official proceeding; the production of evidence in official proceedings; or the presentation of evidence before the court.

3. Any person who offers or expresses intention to give money or other benefits to the witness or person of reference in order to prevent his or her appearance or testimony in official proceedings and production or presentation of evidence before the court.

4. Any witness or person of reference who receive, ask for, or agree on money or other benefits under subparagraph 3.

The paragraph (1) shall apply to any proceedings taking place in Korea when the International Criminal Court requests.

Concerning the case described in paragraph (1), any person who commits any act in Article 152, 154 or Paragraph 1 to 3 of 155 of Criminal Act; Article 5 (9) of Act on the Aggravated Punishment, etc. of Specific Crimes shall be subject to the punishment provided in relevant provisions. In this case, paragraph (4) of Article 155 of Criminal Act shall not apply.

Concerning the case described in paragraph (1), any person who commits an act in Article 136, 127 or 144 against a member of the Court shall be subject to the punishment provided in relevant provision. In this case, any member of the Court is regarded as public servants in accordance with relevant provisions. Concerning the case described in paragraph (1), any person who commits an act in Article 133 of Criminal Act shall be subject to the punishment provided in the same article. In this case, any member of the Court is regarded as public servant in accordance with relevant provisions.

"A member of International Criminal Court" means judge, prosecutor, deputy prosecutor, director-general, deputy director-general and person who is in chare of administrative works at the Court in accordance with the International Criminal Court Statute.

Article 17 (Exclusion of crime indictable upon a complaints and Non-punishable offences without victim's complaint)

Genocides and other crimes shall be prosecuted even though prosecution is against victim's clear will.

Article 18 (Consideration of element of crimes in Statute of International Criminal Court)

In the application of Article 8 through 14, the elements of crimes adopted by the Assembly of States Parties, International Criminal Court, held on September 9 2002, shall be considered in pursuant to article 9 of Statute of International Criminal Court.

Chapter 3 Cooperation of International Criminal Court

Article 19 (Mutatus Mutandis Application of Extraction Act) Extraction Act shall apply to the extraction of criminal between the Republic of Korea and International Criminal Court. In case that the Court has any other provision in the International Criminal Court Statute which is not consistent with Extraction Act, the Statute of the International Criminal Court shall apply. In paragraph (1), "requesting state" means "International Criminal Court" and

"extradition treaty" means "Statute of International Criminal Court" Article 20 (Mutatis Mutandis Application of Act on International Judicial Mutual Assistance in Criminal Matters)

Mutual assistance or cooperation, requested by the International Criminal Court or requested to the International Criminal Court, related to investigations or judiciary proceedings of International Criminal Court shall be applied by Act on International Judicial Mutual Assistance in Criminal Matters. In paragraph (1), "Foreign countries" means "International Criminal Court", "Treaty of Mutual assistance" means "Provision of International Criminal Court" ADDENDUM

Article 1 (Enforcement Date)

This Act enters into force on the date of its promulgation. Article 2 (Amendment of Other Act)

Parts of Proceeds of Crime Act shall be amended to read as follows; Article 2 Subparagraph 2 Item 2 of the Act shall be amended to read as follows.

2. Funds or assets related to the offences prescribed in Article 19 paragraph (2)1 of Act on Punishment of Prostitution Brokerage (applied only to the act of providing funds, land, or buildings with the knowledge that such properties are provided for prostitution or brokerage of prostitution), Article 5 (2) and Article 6 (applies only to the attempted crimes of Article 5 (2)) of Punishment of Violence Act, Article 3 (1) of Act on Bribery of Foreign Public Officials in International Business Transactions, Article 4 of Act on Aggravated Punishment of Economic Crimes, Article 8 to 16 of Act on the punishment of crimes within the jurisdiction of the International Criminal Court

Parts of Act on Protection of relator of Specific crimes,etc. shall be amended to read as follows;

Item 4 of Article 2 Subparagraph1 shall be established to read as follows.

4. Offences under Article 8 through 16 described in the Act on the punishment of crimes within the jurisdiction of the International Criminal Court