

ACT ON PUNISHMENT, ETC. OF CRIMES UNDER JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

[Enforcement Date 12. Apr, 2011.] [Act No.10577, 12. Apr, 2011., Partial Amendment]

법무부(국제형사과), 02-2110-3293

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to punish crimes within the jurisdiction of the International Criminal Court and set the procedures for cooperation between the Republic of Korea and the International Criminal Court pursuant to the Rome Statute of the International Criminal Court so as to respect the dignity and value of mankind and realize justice in the international community.

Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "crimes of genocide, etc." means crimes referred to in Articles 8 through 14;
2. The term "International Criminal Court" means the court established pursuant to the Rome Statute of the International Criminal Court (hereinafter referred to as the "Statute of the International Criminal Court") which was adopted at the United Nations Conference of Plenipotentiaries held in Rome, Italy on July 17, 1998 and came into force on July 1, 2002;
3. The term "Geneva Conventions" means the Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention), the Geneva Convention of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention), the Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War (Third Convention), and the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War (Fourth Convention);
4. The term "foreigner" means a person who does not possess the nationality of the Republic of Korea;

5. The term "enslavement" means the exercise of any sort of power attached to ownership over people and includes the exercise of such power in the course of trafficking people, in particular, women and children;
6. The term "forced pregnancy" means the act of forcibly impregnating a woman, or the act of maintaining the pregnancy of a woman forcibly induced to become pregnant by unlawfully confining her without any justifiable ground, in an attempt to affect the ethnic composition in any population or commit other grave violations of international laws;
7. The term "person protected by the international laws on humanity" means any of the following persons:
 - (a) In cases of any international armed conflict, wounded, sick or shipwrecked persons, prisoners of war or civilians protected by the Geneva Conventions and the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflict (Protocol 1);
 - (b) In cases of any armed conflict not of an international character, wounded, sick or shipwrecked persons, or persons taking no direct part in the hostilities who are under the control of parties concerned with such armed conflict;
 - (c) In cases of any international or non-international armed conflict, members or combatants of hostile armies who have surrendered or have lost the ability to defend themselves.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

- Article 3 (Scope of Application)**(1) This Act shall apply to any Korean national or foreigner who commits a crime provided for in this Act within the territory of the Republic of Korea.
- (2) This Act shall apply to any Korean national who commits a crime provided for in this Act outside the territory of the Republic of Korea.
- (3) This Act shall apply to any foreigner who commits a crime provided for in this Act on board a vessel or aircraft registered in the Republic of Korea, while outside the territory of the Republic of Korea.
- (4) This Act shall apply to any foreigner who commits a crime provided for in this Act against the Republic of Korea or its people outside the territory of the Republic of Korea.

(5) This Act shall apply to any foreigner who commits the crime of genocide, etc. outside the territory of the Republic of Korea and resides in the territory of the Republic of Korea.

Article 4 (Acts Done Pursuant to Superior's Orders)(1) When any person who is under a legal obligation to obey orders of the Government or a superior commits the crime of genocide, etc. pursuant to an order of the Government or a superior without knowledge that the order is unlawful, he/she shall not be punished if the order is not manifestly unlawful and he/she has a justifiable reason for not knowing that such order is unlawful.

(2) In cases falling under paragraph (1), any order to commit any crime provided for in Article 8 or 9 shall be deemed manifestly unlawful.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 5 (Responsibilities of Commanders and other Superiors)

When a military commander (including those actually exercising the power of military commanders; hereinafter the same shall apply) or a superior (including those actually exercising the power of superiors; hereinafter the same shall apply) of an organization or an institution aware that subordinates under his/her effective command and control are committing or intending to commit the crime of genocide, etc. fails to take any necessary and reasonable measures to prevent them from doing so, not only shall those who commit such crime of genocide, etc. shall be punished, but the commanders or superiors thereof shall also be subject to punishment provided for in each of the relevant Articles.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 6 (Non-Applicability of Statute of Limitations)

The crime of genocide, etc. shall not be subject to the prescription for public prosecution provided for in Articles 249 through 253 of the Criminal Procedure Act and Articles 291 through 295 of the Military Court Act and the prescription for execution of judgment of the guilty provided for in Articles 77 through 80 of the Criminal Act.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 7 (Judgment of Acquittal)

Any prosecuted case involving the crime of genocide, etc. for which the International Criminal Court has already made final judgment of conviction or acquittal, shall be declared dismissed by judgment.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

CHAPTER II PUNISHMENT OF CRIMES WITHIN JURISDICTION OF INTERNATIONAL CRIMINAL COURT

Article 8 (Crime of Genocide)(1) Any person who kills a member of a national, racial, ethnical or religious group with intent to fully or partially destroy the group shall be punished by the death penalty or imprisonment for life or for not less than seven years.

(2) For the purposes stipulated in paragraph (1), any person who commits any of the following acts shall be punished by imprisonment for life or for not less than five years:

1. Causing grievous bodily or mental harm to a member of any group referred to in paragraph (1);
2. Deliberately inflicting on any group referred to in paragraph (1) living conditions of life calculated to bring about its full or partial physical destruction;
3. Imposing measures intended to prevent births within any group referred to in paragraph (1);
4. Forcibly transferring children of any group referred to in paragraph (1) to another group.

(3) Any person who causes another person's death by committing any act provided for in any subparagraph of paragraph (2) shall be subject to punishment referred to in paragraph (1).

(4) Any person who instigates any crime provided for in paragraph (1) or (2) shall be punished by imprisonment for a fixed term of not less than five years.

(5) Any attempt to commit any crime provided for in paragraph (1) or (2) shall be punished.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 9 (Crimes against Humanity)(1) Any person who has killed another person by making an extensive or systematic attack directed against any civilian population in connection with the policies of the State,

organizations or institutions to commit such attack shall be punished by the death penalty or imprisonment for life or for not less than seven years.

(2) Any person who commits any of the following acts by making an extensive or systematic attack directed against any civilian population in connection with the policies of the State, organizations or institutions to commit such attack shall be punished by imprisonment for life or for not less than five years:

1. Intentionally inflicting on the population living conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of such population;
2. Enslaving people;
3. Deporting or forcibly transferring the residents from the area in which they are lawfully present, in violation of international laws;
4. Imprisoning the residents or otherwise depriving them of physical liberty, in violation of international laws;
5. Torturing a person in the custody or under the control of the accused by inflicting grievous pain or suffering, whether physical or mental, upon such person without any justifiable ground;
6. Committing rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity;
7. Depriving a member of a group or collectivity of his/her fundamental human rights or restricting his/her fundamental human rights on political, racial, national, ethnical, cultural, religious, gender or other grounds recognized as impermissible under international laws;
8. Committing any of the following acts with the authorization, support or acquiescence of the State or a political organization, with the intention of removing a person from the protection of the law for a prolonged period of time:
 - (a) Arresting, detaining, abducting or kidnapping (hereinafter referred to as "arrest, etc.") a person and refusing to give information or providing incorrect information on the fact regarding the arrest, etc., identity, the fate, whereabouts, etc. of such person;
 - (b) Refusal by a person who is obliged to give information stated in item (a) to give such information or the provision of incorrect information;
9. Other inhumane acts causing grievous bodily or mental suffering or injury in any way other than those listed in subparagraphs 1 through 8.

(3) A member of a racial group who commits any act referred to in paragraph (1) or (2) with intent to maintain a regime of systematic oppression and domination over any other racial group or groups shall be subject to the punishment stipulated in each of such paragraphs.

(4) Any person who causes another person's death by committing any act listed in any subparagraph of paragraph (2) or any act referred to in paragraph (3) (limited to acts listed in any subparagraph of paragraph (2)) shall be subject to the punishment stipulated in paragraph (1).

(5) Any attempt to commit a crime provided for in any of paragraphs (1) through (3) shall be punished.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 10 (War Crimes against Persons)(1) Any person who kills a person protected pursuant to international laws on humanity in relation to international or non-international armed conflict (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 shall apply) shall be punished by the death penalty or imprisonment for life or for not less than seven years.

(2) Any person who commits any of the following acts in relation to international or non-international armed conflict shall be punished by imprisonment for life or for not less than five years:

1. Taking as a hostage any person protected pursuant to international laws on humanity;
2. Causing grievous suffering or serious injury to body or health by torturing or mutilating any person protected pursuant to international laws on humanity;
3. Committing rape, forced prostitution, sexual slavery, forced pregnancy or forced sterilization upon any person protected pursuant to international laws on humanity.

(3) Any person who commits any of the following acts in relation to international or non-international armed conflict shall be punished by imprisonment for a fixed term of not less than three years:

1. Deporting or forcibly transferring any person protected pursuant to international laws on humanity from the area in which he/she is present, in violation of international laws;

2. Passing sentence upon any person protected pursuant to international laws on humanity or carrying out such sentence, without undergoing a fair and regular trial;
 3. Subjecting any person protected pursuant to international laws on humanity to medical or scientific experiments of any kind which are not justified by medical treatment, etc. and which cause serious harm to his/her life or body, without his/her prior voluntary consent thereto;
 4. Wounding a member or a combatant of a hostile army who surrenders at discretion or loses the ability to defend himself/herself;
 5. Conscripting or enlisting any person under the age of 15 years into armed forces or groups or using him/her to participate in hostilities.
- (4) Any person who seriously humiliates and degrades any person protected pursuant to international laws on humanity in relation to international or non-international armed conflict shall be punished by imprisonment for a fixed term of not less than one year.
- (5) Any person who commits any of the following acts in relation to international armed conflict shall be punished by imprisonment for a fixed term of not less than three years:
1. Confining any person protected pursuant to international laws on humanity, without any justifiable ground;
 2. Transferring part of his/her own civilian population into the occupied territory;
 3. Compelling any person protected pursuant to international laws on humanity to serve in the army against his/her own country;
 4. Compelling a national of the enemy country to take part in the operations of war directed against his/her own country.
- (6) Any person who causes another person's death by committing any crime provided for in paragraph (2), (3) or (5) shall be punished by the death penalty or imprisonment for life or for not less than seven years.
- (7) Any attempt to commit any crime provided for in any of paragraphs (1) through (5) shall be punished.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 11 (War Crimes against Property and Rights)(1) Any person who, in relation to international or non-international armed conflict, despoils an enemy country or party of its property or extensively destroys, requisitions or seizes the property of the enemy country or party, not

imperatively required by the necessities of war, in violation of international laws, shall be punished by imprisonment for life or for not less than three years.

(2) Any person who, in relation to international armed conflict, declares abolished, suspended or inadmissible in a court of law the rights or actions of all or the greater part of the nationals of an enemy nation, in violation of international laws, shall be punished by imprisonment for a limited term of not less than three years.

(3) Any attempt to commit any crime provided for in paragraph (1) or (2) shall be punished.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 12 (War Crimes against Humanitarian Activities, Distinctive Emblems, etc.)

(1) Any person who commits any of the following acts in relation to international or non-international armed conflict shall be punished by imprisonment for a fixed term of not less than three years:

1. Intentionally directing an attack against personnel, installations, materials, 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 the international laws on armed conflict;
2. Directing an attack against buildings, materials, medical units, and means of transportation and personnel of medical units lawfully using the distinctive emblems prescribed in the Geneva Conventions.

(2) Any person who causes another person's death or any grievous bodily injury to another person by making improper use of the distinctive emblems prescribed in the Geneva Conventions, a flag of truce, or a flag, military insignia or uniform of the enemy or of the United Nations in relation to international or non-international armed conflict shall be punished according to the following classifications:

1. Any person who causes another person's death shall be punished by the death penalty or imprisonment for life or for not less than seven years;
2. Any person who causes any grievous bodily injury to another person shall be punished by imprisonment for life or for not less than five years.

(3) Any attempt to commit any crime provided for in paragraph (1) or (2) shall be punished.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 13 (War Crimes Using Forbidden Means)(1) Any person who commits any of the following acts in relation to international or non-international armed conflict shall be punished by imprisonment for life or for not less than three years:

1. Directing an attack against the civilian population as such or against individual civilians not directly taking part in hostilities;
2. Attacking buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where sick and wounded persons are gathered, which are not military objectives, or attacking villages, dwellings or buildings which are undefended or dams or other installations which involve physical danger;
3. Making an attack which causes the loss of life or injury to civilians or severe damage to civilian objects and which would be clearly excessive in relation to the necessities of military operations;
4. Utilizing a person protected pursuant to international laws on humanity to render certain objects immune from military operations;
5. Using starvation of civilians as a means of warfare by depriving them of objects indispensable to their survival or impeding the supply of such objects, in violation of international laws on humanity;
6. Directing or coercing subordinates to kill enemy combatants without exception as a military commander;
7. Killing or wounding individuals belonging to an enemy army or combatant adversaries by using any treacherous act forbidden in international laws.

(2) Any person who causes death or injury to any person protected pursuant to international laws on humanity by committing any crime provided for in any of paragraph (1) 1 through 6 shall be punished according to the following classifications:

1. A person who causes the death of such person shall be punished by the death penalty or imprisonment for life or for not less than seven years;
2. A person who causes any serious bodily injury to such person shall be punished by imprisonment for life or for not less than five years.

(3) Any person who, in relation to international or non-international armed conflict, makes an attack which causes extensive, long-term and severe damage to the natural environment that would be clearly excessive in relation to the necessities of military operations shall be punished by imprisonment for a fixed term of not less than three years.

(4) Any attempt to commit any crime provided for in paragraph (1) or (3) shall be punished.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 14 (War Crimes Using Forbidden Weapons)(1) Any person who employs any of the following weapons in relation to international or non-international armed conflict shall be punished by imprisonment for life or 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) Any person who causes any harm to another person's life, body or property by committing any crime provided for in paragraph (1) shall be punished by the death penalty or imprisonment for life or for not less than seven years.

(3) Any attempt to commit any crime provided for in paragraph (1) shall be punished.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 15 (Dereliction of Duties by Commanders, etc.)(1) When a military commander, or a superior of an organization or institution, fails to prevent or stop subordinates under his/her effective command and control from committing the crime of genocide, etc., by neglecting his/her duties, he/she shall be punished by imprisonment for not more than seven years.

(2) Any person who negligently fails to prevent or stop a crime provided for in paragraph (1) shall be punished by imprisonment for not more than five years.

(3) A military commander, or a superior of an organization or institution, who fails to inform the investigating agency of subordinates under his/her effective command and control who have committed the crime of genocide, etc. shall be punished by imprisonment for not more than five years.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 16 (Offences against Administration of Justice)(1) With respect to any case investigated by or on trial at the International Criminal Court, any person who falls under any of the following subparagraphs may be

punished by imprisonment for not more than five years or by a fine of not more than 15 million won, or by both:

1. A person who presents false evidence;
2. A person who obstructs, by means of violence or intimidation, the appearance or testimony of a reference witness or witness or the collection or presentation of evidence;
3. A person who promises, offers, or expresses an intention to offer money, things of value or other property interests to a reference witness or witness to obstruct the appearance or testimony of such witness or the collection or presentation of evidence;
4. A reference witness or witness who gives, receives, solicits or promises such money, things of value or other property interests as referred to in subparagraph 3.

(2) Paragraph (1) shall also apply to proceedings in the Republic of Korea upon request or demand by the International Criminal Court.

(3) With respect to cases provided for in paragraph (1), any person who commits any act referred to in Article 152, 154 or 155 (1) through (3) of the Criminal Act or Article 5–9 of the Act on the Aggravated Punishment, etc. of Specific Crimes shall be subject to the punishment provided for in the corresponding provisions. In such cases, Article 155 (4) of the Criminal Act shall not apply.

(4) With respect to cases provided for in paragraph (1), any person who commits any act referred to in Article 136, 137 or 144 of the Criminal Act against an official of the International Criminal Court shall be subject to the punishment provided for in the corresponding provisions. In such cases, the official of the International Criminal Court shall be deemed a public official for the purposes of such Article.

(5) With respect to cases provided for in paragraph (1), any person who commits any act referred to in Article 133 of the Criminal Act against an official of the International Criminal Court shall be subject to the punishment provided for in the said provisions. In such cases, the official of the International Criminal Court shall be deemed a public official for the purposes of the relevant Article.

(6) The term "official of the International Criminal Court" in this Article refers to persons including the judge, prosecutor, deputy prosecutor, registrar and deputy registrar who take charge of the administrative affairs

of the International Criminal Court in accordance with the Statute of the International Criminal Court.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 17 (Exclusion from Application of Crime Subject to Prosecution on Complaint and Crime not Punishable against Victim's Will)

The crime of genocide, etc. may be subject to public prosecution, even though no complaint therefor is filed and the prosecution is clearly against the victim's will.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 18 (Consideration of Elements of Crimes in Statute of International Criminal Court)

Where necessary for the purposes of Articles 8 through 14, the elements of crimes adopted by the Assembly of States Parties to the Statute of the International Criminal Court on September 9, 2002, may be taken into consideration in accordance with Article 9 of the Statute of the International Criminal Court.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

CHAPTER III COOPERATION WITH INTERNATIONAL CRIMINAL COURT

Article 19 (Mutatis Mutandis Application of Extradition Act)(1) The Extradition Act shall apply mutatis mutandis with respect to the surrender of criminals between the Republic of Korea and the International Criminal Court: Provided, That the Statute of the International Criminal Court shall prevail if any of its provisions are inconsistent with the Extradition Act.

(2) In cases under paragraph (1), the term 'requesting state' in the Extradition Act shall be construed as "International Criminal Court", and "extradition treaty" in the said Act, "Statute of the International Criminal Court", respectively.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

Article 20 (Mutatis Mutandis Application of Act on International Judicial Mutual Assistance in Criminal Matters)(1) The Act on International Judicial Mutual Assistance in Criminal Matters shall apply mutatis mutandis with respect

to mutual assistance requested by the International Criminal Court or requested from the International Criminal Court, in relation to criminal

investigations or judiciary proceedings of the International Criminal Court:
Provided, That the Statute of the International Criminal Court shall prevail
if any of its provisions are inconsistent with the Act on International
Judicial Mutual Assistance in Criminal Matters.

(2) In cases falling under paragraph (1), the term 'foreign country' in the
Act on International Judicial Mutual Assistance in Criminal Matters shall
be construed as "International Criminal Court", and 'mutual assistance
treaty' in the said Act, "Statute of the International Criminal Court",
respectively.

[This Article Wholly Amended by Act No. 10577, Apr. 12, 2011]

 부칙 <제8719호, 2007.12.21>

제1조 (시행일) 이 법은 공포한 날부터 시행한다.

 부칙 <제10577호, 2011.4.12>

이 법은 공포한 날부터 시행한다.