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

[Enforcement Date 21. Dec, 2007.] [Act No.8719, 21. Dec, 2007., New Enactment]

법무부 (국제형사과)02-2110-3293



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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 definitions of terms used in this Act shall be as follows:

1. The term 'crime of genocide, etc.' means any crimes listed 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 any person who does not possess the nationality of the Republic of Korea;

5. The term '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. The term 'forced pregnancy' means the act of forcibly inducing a woman to become pregnant or the act of maintaining the pregnancy of a woman forcibly induced to become pregnant by means of unlawful confinement without any justifiable reason, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law;
7. The term 'person protected by the international law on humanity' means any of the following items:
 - (a) In cases of any international armed conflict, a wounded, sick or shipwrecked person, a prisoner of war or a civilian 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, a wounded, sick or shipwrecked person, or a person taking no direct part in the hostilities who is under control of a party to such armed conflict;
 - (c) In cases of any international or non-international armed conflict, a member of a hostile army or a combatant who surrenders or loses the ability to defend himself/herself.

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 owned by Republic of Korea, 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 stays in the territory of the Republic of Korea.

Article 4 (Act Done Pursuant to Superior's Order) (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 the order is unlawful.

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

Article 5 (Responsibility of Commanders and other Superiors)

When a military commander (including any person effectively acting as a military commander; hereinafter the same shall apply) or a superior (including any person effectively acting as a superior; hereinafter the same shall apply) of an organization or an institution fails to take any necessary and reasonable measures to prevent subordinates under his/her effective command and control from committing the crime of genocide, etc. even though he/she is aware that they are committing or about to commit such crime, etc., he/she as well as the offenders concerned shall be subject to punishment provided for in each of the relevant Articles.

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.

Article 7 (Judgment of Acquittal)

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

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 destroy the group in whole or in part shall be punished by death or imprisonment for life or for not less than seven years.

(2) For the purpose 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) conditions of life calculated to bring about its physical destruction in whole or in part;
 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'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 limited term of not less than five years.
- (5) Any attempt to commit any crime provided for in paragraph (1) or (2) shall be punished.

Article 9 (Crimes against Humanity) (1) Any person who has killed another person by making a widespread or systematic attack directed against any civilian population pursuant a State or organization and institution's policies to commit such attack shall be punished by death or imprisonment for life or for not less than seven years.

(2) Any person who commits any of the following acts by making a widespread or systematic attack directed against any civilian population pursuant to a State or organization and institution's policies to commit such attack shall be punished by imprisonment for life or for not less than five years:

1. Intentionally inflicting on the population 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 law;
4. Imprisoning the residents or otherwise depriving them of physical liberty, in violation of international law;
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 reason;

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 that are recognized as impermissible under international law;
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 of arrest, etc., identity, the fate, whereabouts, etc. of that 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 of 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 acts referred to in paragraph (1) or (2) with intent to maintain 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's death by committing any acts listed in any subparagraph of paragraph (2) or as referred to in paragraph (3) (limited to any acts listed in any subparagraph of paragraph (2)) shall be subject to the punishment stipulated in paragraph (1).
 - (5) Any attempt to commit crime provided for in any of paragraphs (1) through (3) shall be punished.

Article 10 (War Crimes against Persons) (1) Any person who kills a person protected pursuant to international law 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 death 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 law on humanity;
2. Causing grievous suffering or serious injury to body or health by torturing or mutilating any person protected pursuant to international law on humanity;
3. Committing rape, forced prostitution, sexual slavery, forced pregnancy or forced sterilization upon any person protected pursuant to international law 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 limited term of not less than three years:

1. Deporting or forcibly transferring any person protected pursuant to international law on humanity from the area in which they are present, in violation of international law;
2. Passing sentence upon any person protected pursuant to international law on humanity or carrying out such sentence, without undergoing a fair and regular trial;
3. Subjecting any person protected pursuant to international law on humanity to medical or scientific experiments of any kind which are not justified by medical treatment, etc. and which cause any serious harm to his/her life or body, without his/her voluntary prior 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 fifteen 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 law on humanity in relation to international or non-international armed conflict shall be punished by imprisonment for a limited 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 limited term of not less than three years:

1. Confining any person protected pursuant to international law on humanity, without any justifiable reason;
2. Transferring part of his/her own civilian population into the occupied territory;
3. Compelling any person protected pursuant to international law 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's death by committing any crime provided for in paragraphs (2), (3) or (5) shall be punished by death 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.

Article 11 (War Crimes against Property and Rights) (1) Any person who, in relation to international or non-international armed conflict, despoils the 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 law 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 the enemy nation in violation of international law 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.

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 limited term of not less than three years:

1. Intentionally directing an attack 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 the international law of armed conflict;
2. Directing an attack against buildings, material, medical units and transport, and personnel lawfully using the distinctive emblems of the Geneva Conventions.

(2) Any person who causes another's death or any grievous bodily injury to another by making improper use of the distinctive emblems of the Geneva Conventions, a flag of truce, of the flag or of the 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:

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

Article 13 (War Crimes Using Forbidden Methods) (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 taking direct part in hostilities;
 2. Attacking buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded 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 the persons protected pursuant to international law on humanity to render certain objects immune from military operations;
 5. Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival or impeding the supply of such objects in violation of international law on humanity;
 6. Directing or coercing subordinates to kill enemy combatants without exception as a military commander;
 7. Killing or wounding individuals belonging to the enemy army or combatant adversaries by using any such treacherous act as forbidden in international law.
- (2) Any person who causes death or injury to any person protected pursuant to international law on humanity by committing the crimes provided for in any of paragraph (1) 1 through 6 shall be punished according to the following:

1. A person who causes the death of such person shall be punished by death 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 widespread, 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 limited term of not less than three years.
- (4) Any attempt to commit any crime provided for in paragraph (1) or (3) shall be punished.

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 death 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.

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 fails to prevent or stop the crime provided for in paragraph (1) by negligence 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.

- Article 16 (Offences against Administration of Justice)** (1) With respect to any case that is being 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 not more than fifteen million won, or 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 witness or the collection or presentation of evidence;
 3. A person who promises, offers, or expresses an intention to offer any money, thing of value or other property interest to a 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 any such money, thing of value or other property interest as referred to in subparagraph 3.
- (2) The provisions of 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 Articles 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 each corresponding Article. 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 Articles 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 each corresponding Article. In such cases, an official of the International Criminal Court shall be deemed to be a public official for the purposes of each 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 Article. In such cases, the official of the International Criminal Court shall be deemed to be the public official for the purposes of the relevant Article.
- (6) The term 'official of the International Criminal Court' in this Article refers to any person who takes charge of the duties of the International Criminal Court, including the judge, prosecutor, deputy prosecutor, registrar and deputy registrar in accordance with the

Statute of the International Criminal Court.

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.

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

Where necessary with regards to the application 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.

CHAPTER III COOPERATION WITH INTERNATIONAL CRIMINAL COURT

Article 19 (Application Mutatis Mutandis 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 it includes any provisions inconsistent with the Extradition Act.

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

Article 20 (Application Mutatis Mutandis 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, related to criminal investigations or judiciary proceedings of the International Criminal Court: Provided, That the Statute of the International Criminal Court shall prevail if it includes any provisions inconsistent with the Act on International Judicial Mutual Assistance in Criminal Matters.

(2) In cases under paragraph (1), the term 'foreign country' in the Act on International Judicial Mutual Assistance in Criminal Matters shall be deemed to be the International

Criminal Court, and 'mutual assistance treaty' in the said Act, the Statute of the International Criminal Court.