

JURISDICTIONAL BRIEFS FOR INTERNATIONAL JUSTICE IN ASIA

Republic of Korea



The following document surveys legal avenues that *may* be available to survivors of international crimes, specifically in the **Republic of Korea**. It includes a summary of the Korean legal system and a review of potentially useful legislation and case law.

Nothing in this brief constitutes legal advice or an endorsement of particular legal services.

Please seek advice from legal professionals qualified in the relevant domestic jurisdiction.

Links to translations in English may not be official. Please consult versions of legislation or decisions in their original languages.

This brief has been produced by the Asia Justice Coalition secretariat. It should not be taken to reflect the views or positions of all members.

Last updated March 2024.

Contents

Practitioner Summary	3
Legal System	4
International Obligations & Domestic Law	5
Relevance Of International Law To The Domestic System	5
Process For Concluding & Incorporating Treaties	6
Hierarchy Of Laws In The Domestic System	7
<i>Effect Of Treaties</i>	7
<i>Effect Of Customary International Law</i>	8
<i>Conflict Between Laws</i>	8
Jurisdiction & Extraterritoriality	9
Extradition	11
Sanctions	11
Trade Sanctions	11
Asset Freezing & Financial Sanctions	12
Travel Bans	14
Aviation Bans & Maritime Sanctions	14
Selected Legislation in Depth	15
Act On Punishment Of Crimes Under Jurisdiction Of The International Criminal Court	15
Civil Act Of Korea & Related Acts For Civil Claims	19
Relevant Practice and Case Summaries	23
Criminal Law	23
<i>First Korean Prosecution For Piracy</i>	23
Civil Law	23
<i>Enforcement Of The Foreign Individuals' Assets Located In The Territory Of Korea</i>	23
<i>Cases With Foreign Government Defendants (Other Than North Korea)</i>	24
<i>Cases With Government Of North Korea As A Defendant</i>	26
Acknowledgments & Back Matter	28

Practitioner Summary



Korea Is A Rome Statute Party With Relevant Implementing Legislation.

The Republic of Korea (hereafter South Korea or Korea) acceded to the Rome Statute in 2002 and passed legislation intended to 'punish crimes within the jurisdiction of the International Criminal Court'. However, enforcement of the legislation is subject to jurisdictional and territorial requirements that may make it difficult to prosecute acts by non-citizens outside Korea that are not directed at the Republic.

Korea Has Relevant Legislation And Treaty Obligations With Extraterritorial Effect, But A Connection To Korea Likely Required.

Korea has relevant domestic legislation that may be applied extraterritorially. This includes the Penal Code, which can apply to conduct outside Korea and to conduct involving non-citizens. Likewise, treaties to which Korea is a Party have been used to give domestic courts extraterritorial jurisdiction. However, in practice, matters that have utilized the extraterritorial effect of such legislation have still had some connection to Korea. Korean courts have not heard cases relying on 'pure' universal jurisdiction.

Customary International Law May Be Of Use In Domestic Courts.

Compared to other surveyed jurisdictions, Korea's courts are more willing to apply customary international law principles without additional implementing legislation. This is because Article 6(1) of the Constitution of Korea (the Constitution) states that 'the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea'. Article 6(1) also recognizes treaties, that are 'duly concluded and promulgated under the Constitution', have the same effect as 'domestic law', though some treaties may be considered subordinate to domestic statutes.

Extradition Treaties And Sanction Measures Are Available.

Korea has well-developed extradition and sanctions legislation and cooperates with foreign governments on international criminal matters.

Legal System

Korea's legal system is based on a civil law system. Because of this, the principle of *stare decisis* does not apply; however, in practice 'lower courts tend to follow the legal interpretations ascertained by' Korea's Supreme Court.

Its judicial system utilizes a three-instance trial system including District Courts, High Courts, and the Supreme Court. A system of specialized courts also exists, including the Patent Court (which ranks at the same level as a High Court) and Administrative and Family Courts (which rank at the same level as a District Court). A separate Martial Court employs military officers—as opposed to judges—to hear cases.

District Courts are the courts of first instance for most criminal and civil cases. The Supreme Court retains final appellate jurisdiction over all cases, including over military trials and matters in the specialized courts.

Korea also has a separate Constitutional Court. The Constitutional Court is an independent judicial body that specializes in reviewing the constitutionality of laws, settling disputes related to the Constitution, and adjudicating impeachment cases against high-ranking public officials.

Relevant Constitutional Provisions

Article 3

The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands.

Article 6

(1) Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of Korea.

(2) The status of aliens shall be guaranteed as prescribed by international law and treaties.

Article 11(1)

All citizens (emphasis added) shall be equal before the law, and *there shall be no discrimination* (emphasis added) in political, economic, social or cultural life on account of sex, religion or social status.

Article 27

(1) *All citizens* (emphasis added) shall have the right to be tried in conformity with the statute by judges qualified under the Constitution and the statute[...]

(3) *All citizens* (emphasis added) shall have the right to a speedy trial. *The accused* (emphasis added) shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary.

Article 29(1)

In case a person has sustained damages by an unlawful act committed by a public official in the course of official duties, he/she may claim just compensation from the government of Korea or public organization under the conditions as prescribed by the statute. In this case, the public official concerned shall not be immune from liabilities.

Notably, the Constitutional Court may also directly hear complaints of individuals claiming that 'their fundamental rights [under the Constitution] have been violated by the government's action or inaction.' (See Article 111 (1), Constitution of the Republic of Korea and Article 2, Constitutional Court Act).

The Constitutional Court is composed of nine Justices who are appointed by the President, the National Assembly, and the Chief Justice of the Supreme Court.

International Obligations & Domestic Law

Relevance Of International Law To The Domestic System

In Korea, the relevance of international law to the domestic system depends on the type of law in question.

The incorporation of international obligations occurs in one of two ways: (1) by approval by the executive and legislative branches, followed if necessary by the creation of implementing legislation; or (2) by direct application.

Approval And Creation Of Implementing Legislation

In general, Korea follows a dualist approach when it comes to the incorporation of international law. This means that international treaties must be transformed into domestic legislation before they can have a direct effect on the rights and obligations of individuals within the country. Once a treaty has been concluded by the executive branch, it may require consent by the National Assembly (the legislative branch, discussed further [below](#)). For an in-depth explanation of the treaty-making process, see [here](#).

If consent is granted, the treaty may or may not require the creation or amendment of domestic legislation to give the treaty effect in domestic law. Whether this is necessary depends on the obligations undertaken by Korea in the treaty. Implementing legislation allows the treaty's provisions to be enforced and applied within the domestic legal system.

Direct Applicability

Customary international law, which consists of general and consistent practices of states that are accepted as legally binding, can have direct applicability in Korean courts without the need for implementing legislation.

This is because Article 6(1) of the Constitution states that 'the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea'. 'Generally recognized rules of international law' has been interpreted to mean both customary international law *and* general principles of law (as described in Article 38(1) of the Statute of the International Court of Justice). Korean courts have recognized and applied customary international law in some cases (see [below](#)), treating it as part of the country's domestic law.

Process For Concluding & Incorporating Treaties

In Korean law, there are two types of treaties: one requiring the National Assembly's consent for its legal effect as domestic law, and another that does not.¹

Article 73 of the Constitution permits the President to conclude and ratify all treaties, with the State Council's (or chief executive body's) deliberation under Article 89(3). However, Article 60(1) grants the National Assembly the right to consent to particular types of treaties. These include: 'treaties pertaining to mutual assistance or mutual security; treaties concerning important international organizations; treaties of friendship, trade and navigation; treaties pertaining to any restriction in sovereignty; peace treaties; treaties which will burden the State or people with an important financial obligation; or treaties related to legislative matters'.

If the National Assembly's consent is obtained pursuant to Article 60(1), the treaty itself may become a legal basis for the implementation without revising or enacting specific domestic laws.

For example, the Constitutional Court held that the Marrakesh Agreement establishing the World Trade Organization (WTO) had the same legal effect as domestic law, and that, as the agreement was duly concluded and promulgated, any provisions it contained that created criminal offences or increased criminal punishment had the same effect as if they were added to domestic criminal law.²



The majority view of academics in Korea is that the 'treaties related to legislative matters' means the 'treaties in relation to the rights and obligations of the people of Korea.'

However in some cases, implementing legislation, administrative measures, or judicial measures may be required to create specific rights or fulfill specific treaty obligations—even though the treaty itself is already effective in the domestic sphere.

For example, the Constitutional Court held that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Anti-Torture Convention), which was ratified with the consent of the National Assembly, had the same legal effect as domestic law.³

However, the Court noted that the Anti-Torture Convention alone did not create a specific obligation for respondents to provide appropriate compensation or compensation to claimants, and therefore required additional legislation.

1. Constitutional Court *en banc* Decision, Case No 2006Hun-Ra4 decided on March 27, 2008 (138 KCCG, 424).

2. Constitutional Court *en banc* Decision, Case No 97Hun-Ba65 decided on November 26, 1998 (10-2 KCCR, 685).

3. See Constitutional Court *en banc* Decision, Case No 2016Hun-Ma1034 decided on September 30, 2021 (300 KCCR, 1200) and Tae Hyun Choi & Sangkul Kim, 'Nationalized International Criminal Law: Genocidal Intent, Command Responsibility and an Overview of the South Korean Implementing Legislation of the ICC Statute' *Michigan State Journal of International Law* 19 (2011) 589-637.

The executive or the legislature may revise or enact relevant domestic laws before entering a treaty. For instance, before becoming a party to the Vienna Convention for the Protection of Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, the government enacted the Act on the Control of Manufacture of Specific Substances for the Protection of the Ozone Layer. A year later, the government then proceeded to enter into the treaty.

Alternatively, and particularly for multilateral treaties, the National Assembly may revise domestic laws for treaty implementation at the same time as granting its consent. This enables the simultaneous implementation of the treaty and the revised domestic laws.

Hierarchy Of Laws In The Domestic System

Like most domestic legal systems, the Korean Constitution is superior to acts, and acts are superior to decrees or ordinances. The Constitution is also superior to the domestic legal effect of treaties (see Constitution Addenda Article 5).

Effect Of Treaties

Whether a treaty has the same legal effect as an act or a decree/ordinance depends on how the treaty was 'concluded and promulgated' under Constitution Article 6(1) and Article 60(1). If the treaty requires the consent of the National Assembly under Article 60(1), then the treaty will have the status of an act concluded by the National Assembly. If the treaty did not require the consent of the National Assembly, then the treaty will have the status of a decree/ordinance.

For example, the Constitutional Court held that a treaty concerning fishing between Korea and Japan (a treaty falling under the categories given by Article 60(1)) has the same effect as domestic acts.⁴

If considering the legal effect of specific treaty provisions, check whether Korea has entered any relevant reservations.

For example, Korea entered a reservation to Article 22 (Free Association) of the International Covenant on Civil and Political Rights (ICCPR). The reservation states: 'The Government of the Republic of Korea [declares] that the provisions of [...], Article 22 [...] of the Covenant shall be so applied as to be in conformity with the provisions of the local laws including the Constitution of the Republic of Korea'. In a case regarding the prohibition of public officials' engagement in labour organizing, the Constitutional Court held that Article 22 was not effective as domestic law.⁵

Nevertheless, in a dissenting opinion, Justice Doohwan Song asserted that the norms of the International Labour Organization and existing international law 'should serve as an important standard when evaluating the constitutionality of said laws' (as quoted here).

4. See Constitutional Court *en banc* Decision, Case No 99Hun-Ma 139 *et al* decided on March 21, 2001 (13-1 KCCR, 676). For the difference between treaties as 'acts' or as 'decrees or ordinances' in relation to an extradition agreement case see Seoul High Court Decision, 2006 Do1 decided on July 27, 2006.

5. See Constitutional Court *en banc* Decision, Case No 2003Hun-Ba51 decided on August 30, 2007 (19-2 KCCR, 21).

Effect Of Customary International Law

Neither the Constitutional Court nor the Supreme Court has directly addressed the application of customary international law in Korean domestic courts.

Nevertheless, some Constitutional Court judgments provide insight into the legal effect of customary international law. For instance:

- In a case regarding the impeachment of President Roh Moo-hyun, the Constitutional Court interpreted the term 'statutes' within the Constitution to include customary international law:

*As the Constitution provides the grounds for impeachment as a 'violation of the Constitution or statutes...the "statutes" include the statutes in their formal meaning, international treaties that are provided with the same force as statutes, and the **international law that is generally approved** (emphasis added).⁶*

- In a case regarding, in part, whether provisions of the Illegal Check Control Act violated the principle of due process, the Constitutional Court began its decision by noting:

*The principle of respect for international law in Article 6(1) of the Constitution is that treaties **and generally approved international laws have the same effect as domestic laws**, not that treaties or international laws take precedence over domestic laws (emphasis added).⁷*

The Constitutional Court has also noted that, in some instances, customary international law has not yet crystallized sufficiently for its application in domestic law. In a case regarding a statute of limitations⁸ for the crime of torture, the Court distinguished "torture" as a widespread or systematic crime against humanity from "torture" that is neither widespread nor systematic.⁹ The Court noted that, for the former, there was recognized customary international law prohibiting a statute of limitations. For the latter, Professor Whiejin Lee writes that the Court found torture not amounting to a crime against humanity, 'has no ground to be recognized as universal norm of the international community...and is not deemed to be applied in this case as a "generally recognized international norm" under Article 6(1) of the Constitution'.

Conflict Between Laws

Conflicts between international and domestic laws may arise within the Korean legal system. This is because some treaties and customary international law can be applied in domestic courts without the need for separate incorporation procedures.

6. Constitutional Court Decision, Case No 2004Hun-Na1 decided on May 14, 2004 (16-1 KCCR, 609) [4].

7. Constitutional Court Decision, Case No 99Hun-Ka13 decided on April 26, 2001 (13-1 KCCR, 761) [1].

8. Under Korean law, which has a different legal system from common law, it is difficult to accurately distinguish and translate the concepts of statute of limitations and prescription. Therefore, in this brief, the two concepts are not distinguished and described together.

9. Constitutional Court Decision, Case No 2004Hun-Ma889 decided on December 14, 2004, as cited in Whiejin Lee, 'The Enforcement of Human Rights Treaties in Korean Courts' *Asian Yearbook of International Law* 23 (2017) 116.

In such cases, the general principles of '*lex specialis*' (specialized laws take precedence over general laws) and '*lex posterior*' (the most recently enacted law takes precedence) are typically applied to resolve conflicts. For example, the Supreme Court held that 'the Warsaw Convention as amended by the Hague Protocol has the same legal effect as domestic laws, and regarding legal issues concerning international carriage by air, it is *lex specialis* to the Korean Civil Act which is *lex generalis*'.¹⁰

Additionally, conflicts may be resolved by interpreting international law in a manner consistent with domestic law or vice versa. For example, the Supreme Court recently cited the UN Human Rights Committee's General Comment No 34 on Freedom of Expression to interpret Article 310 (*Defamation*) of the Criminal Act.¹¹

Jurisdiction & Extraterritoriality

There is no specific Korean law that limits the right to sue or be sued based on nationality.

Jurisdiction Under The Criminal Act

The Criminal Act serves as the general criminal law of Korea.

Articles 2 through 6 of the Criminal Act specify the scope to which it applies, including to:

1. Both Korean nationals and foreigners who commit crimes within the territory of Korea;
2. All Korean nationals who commit crimes outside the territory of Korea;
3. Foreigners who commit crimes on board a Korean vessel or Korean aircraft outside the territory of Korea;
4. Foreigners who commit any of the following crimes outside the territory of Korea:
 - a. Crimes concerning insurrection;
 - b. Crimes concerning foreign aggression;
 - c. Crimes concerning the national flag;
 - d. Crimes concerning currency;
 - e. Crimes concerning securities, postage and revenue stamps;
 - f. Crimes specified in Articles 225 through 230 of the Criminal Act concerning documents; and
 - g. Crimes specified in Article 238 of the Criminal Act crimes concerning seals; and
5. Foreigners who commit crimes, other than those specified above, against Korea or its nationals outside the territory of Korea; provided that this shall not apply if such acts under the Criminal Act in effect at the time of the act do not constitute a crime or if the prosecution or execution of the punishment for such acts is remitted.

On universal jurisdiction, the government of the Republic of Korea has publicly recognized the principle as 'an important and effective tool in the fight against impunity' but one that 'should be exercised in good faith and harmony with other principles and rules of international law and should not be abused in order to advance political goals'.

10. Supreme Court Decision, 82Da-Ka1372, decided on July 27, 1986.

11. Supreme Court *en banc* Decision, 2020Do5813, decided on November 19, 2020.

In its [statement on universal jurisdiction](#) during the sixty-fifth (2010) UN General Assembly, Korea defined universal jurisdiction as ‘the power wielded by a [S]tate to punish certain crimes, which by themselves fall outside its territory, nationality, or special state interest, on behalf of the entire international community’. The statement noted three listed the following as examples of Korean domestic legislation incorporating universal jurisdiction at that time:

- The [Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics](#);
- The [Act on Punishment for Damaging Ships and Sea Structures](#) (Act on Damaging Ships) (noting a requirement for the accused’s presence in Korea, though see below regarding piracy);
- The [Act on Prevention of Procuring Money for the Purpose of Threatening the Public](#) (noting a requirement for the accused’s presence in Korea, hyperlink unavailable); and
- The [Act on Punishment of Crimes under Jurisdiction of the International Criminal Court](#) (see below, noting a requirement for the accused’s presence in Korea).

The statement also emphasised the relevance of universal jurisdiction in prosecuting piracy (see below).

In its [statement](#) during the seventy-seventh (2022) UN General Assembly, Korea also noted that an amendment to the [Criminal Act](#) in 2013 also extended liability for crimes of trafficking in persons, in line with the principle of universal jurisdiction.

Aut Dedere Aut Judicare Obligations

The [2010 statement](#) asserts that the principle of *aut dedere aut judicare* (the obligation to extradite or prosecute) ‘is neither equal to nor synonymous with universal jurisdiction’. However, it continues, ‘by being a signatory to treaties incorporating the principle...Korea may exercise jurisdiction as appropriate even if it is entirely unconnected to the crime itself’.

These treaties include:

- The [Geneva Conventions](#) and [Additional Protocol I](#)
- [Single Convention on Narcotic Drugs](#) and its [Amending Protocol](#)
- [Convention for the Suppression of Unlawful Seizure of Aircraft](#)
- [Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation](#)
- [Convention on Psychotropic Substances](#)
- [Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents](#)
- [International Convention against the Taking of Hostages](#)
- [Convention on the Physical Protection of Nuclear Material](#)
- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)
- [Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation](#)
- [Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf](#)
- [Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#)
- [Convention on the Safety of the United Nations and Associated Personnel](#)
- [International Convention for the Suppression of Terrorist Bombings](#)
- [International Convention for the Suppression of the Financing of Terrorism](#)
- [United Nations Convention against Corruption](#)

Extradition

Extradition proceedings in Korea are governed by both domestic legislation and international treaties. The primary domestic law is the Extradition Act, which is complemented by the Supreme Court Regulations (see Article 49, Extradition Act). The Regulations establish the court's internal procedures for extradition in compliance with the Extradition Act.

As of January 2023, Korea has bilateral or multilateral extradition treaties with 78 countries (see also [here](#)). If a conflict arises between the Extradition Act and the text of an extradition treaty, the treaty takes precedence over the Act (Article 3-2).

Extradition may also be granted based on a guarantee of reciprocity, ensuring the requesting State will accept extradition requests from Korea for the same or similar offences (Article 4, Extradition Act). However, Korea has not yet entered into an ad hoc arrangement with States that are not extradition treaty partners.

Sanctions

As a member of the United Nations, Korea implements UN Security Council sanctions through domestic legislation and policy enforcement. Korea also may implement autonomous sanctions under the Prohibition of Financing for Offences of Public Intimidation Act (PFOPIA, also known as the Act on Prohibition Against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction).

Korea enforces several types of sanctions, including trade sanctions, asset freezes, financial sanctions, travel bans, aviation bans, and maritime sanctions. The corresponding laws for each type of sanctions are set out below.

Trade Sanctions

The Foreign Trade Act & The Special Measures For Restrictions On Trade For The Maintenance Of International Peace And Security

The Foreign Trade Act (FTA) governs various aspects of foreign trade in Korea, including the country's adherence to international sanctions. The FTA confers broad powers to the Korean government to regulate and manage trade in response to international sanctions. According to Article 5(4) of the FTA, the Minister of Trade, Industry, and Energy may impose restrictions or bans on the exportation and importation of goods, among other measures, to uphold international peace and security as provided in trade agreements that are concluded and enacted in accordance with the Constitution and accepted international laws and regulations.

The administrative measures under Article 5(4) of the FTA, known as the Special Measures for Restrictions on Trade for the Maintenance of International Peace and Security (link in Korean), stipulate specific restrictions concerning foreign trade in Korea.

The Republic of Korea is a member of the World Trade Organisation.

Any trade sanction or ban must comply with the obligations under the General Agreement on Tariffs and Trade 1947 (GATT) General Agreement on Trade in Services (GATS) and other allied agreements. Therefore, any trade restrictions imposed by South Korea must also meet the requirements of GATT obligations.

In particular, Article XXI(c), indicates that nothing in the GATT will be construed 'to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.' In other words, no actions by the UN Security Council under Chapter VII of the UN Charter—including the imposition of economic sanctions (Articles 41 and 39)—will be read to conflict with the GATT provisions.

The Inter-Korean Exchange And Cooperation Act

Regarding UN trade sanctions against North Korea, the Inter-Korean Exchange and Cooperation Act governs direct exchanges, including simple transits, between North and South Korea. Transactions with North Korea through third countries are subject to the FTA, especially concerning UN sanctions on North Korea's trade.

For guidance on the scope and procedures of inter-Korean trade under the Inter-Korean Exchange and Cooperation Act, please refer to the Ministry of Unification's Inter-Korea Exchange and Cooperation System.

Assets Freezing & Financial Sanctions

The Foreign Exchange Transactions Act & The Payment And Receipt Guidelines For The Fulfilment Of The Obligation To Maintain International Peace And Security

Article 15(2) (Payment Procedures) of the Foreign Exchange Transactions Act provides that residents and non-residents who intend to make payments from Korea to a foreign country, or residents who intend to make payments to non-residents or to receive payments from non-residents, may be required to obtain permission from the Minister of Economy and Finance if the transaction falls under any of the following subparagraphs:

- (i) Where it is essential for the faithful fulfilment of treaties concluded by Korea and generally recognized international laws and regulations; or
- (ii) Where it is necessary to contribute to international endeavours for the maintenance of international peace and security.

Furthermore, Article 29(1) (Permission for Payment or Receipt) of the Enforcement Decree of the Foreign Exchange Transactions Act stipulates that, if permission is

mandatory under Article 15(2) of the Foreign Exchange Transactions Act, the person must specify and publicly disclose the reasons why such permission is necessary, as well as the type and scope of payment or receipt.

To fulfil the obligation of maintaining international peace and security, the Minister of Strategy and Finance has established the '[Payment and Receipt Guidelines for the Fulfillment of Obligation to Maintain International Peace and Security](#)' (link in Korean). The Bank of Korea has been entrusted with the reporting and permission functions as per these guidelines. Accordingly, those intending to make or receive payments from those subject to financial sanctions are required to [obtain permission from the Bank of Korea Governor](#) (see link for details).

The PFOPIA & The Financial Services Commission Public Announcement No 2023-6 (23 February 2023)

The [PFOPIA](#) is the legal framework used to implement the International Convention for the Suppression of the Financing of Terrorism and UN Security Council resolutions on weapons of mass destruction (WMD). The PFOPIA prohibits the collection and provision of funds for terrorism financing and the proliferation of WMDs, and it stipulates the designation of restricted persons and approvals for financial transactions.

According to Article 4(1) (Designation, etc. of Persons Subject to Restrictions on Financial Transactions, etc.) of the PFOPIA, the Financial Services Commission (FSC) may designate a natural person, legal person, or group as a "restricted person" and publicly announce such designation where: (1) it is necessary to prevent terrorism financing or restrict the proliferation of WMD in order to comply Korea's treaty obligations or comply with generally accepted international laws; or (2) doing so is necessary to contribute to international efforts to maintain global peace and security.

Under Article 4(4), persons designated and whose designation has been announced must obtain prior approval from the FSC if they intend to: (1) conduct financial transactions with financial institutions; or (2) transfer, gift, dispose or alter the original state of movable assets, immovable assets, bonds, or other property or property rights. Failure to obtain prior approval or falsely or unjustly obtaining approval may result in imprisonment for not more than three years or a fine not exceeding KRW 30 million.

On December 22, 2008, the FSC designated 974 individuals and organizations—including those involved in the Taliban and Al Qaeda that were also designated in UN Security Council Resolution 1267—as restricted persons for the first time. As of February 28, 2023, individuals and organizations related to terrorism or proliferation of WMDs designated in UNSC Resolutions 1267/1989/2253, 1718, 2231, 1988 have been designated as restricted persons (such persons designated by each committee under the United Nations Security Council are automatically designated as restricted persons in Korea by law). Additionally, 752 individuals and organizations are designated as restricted persons on the [FSC List of Restricted Persons](#) (link in Korean).

The Immigration Act

Article 11 (*Prohibition of Entry*) of the Immigration Act stipulates that the Minister of Justice has the authority to prohibit an alien from entering Korea if there is a high likelihood that the individual will engage in conduct that would harm the interests or public security of the country (see specifically Article 11(1)(3)).

Aviation Bans & Maritime Sanctions

The Coast Guard Affairs Act

Under Article 12(1) (*Maritime Inspection and Search*) of the Coast Guard Affairs Act, a Coast Guard police officer can carry out maritime inspection and search of vessels under the following conditions, if there are considerable reasons based on circumstances: (i) vessels impeding the safe navigation of other vessels or operating without consistent navigational status such as the route; (ii) vessels suspected to transport weapons of mass destruction, other weapons, or materials related to them; and (iii) vessels suspected of violating or likely to violate any statute of Korea or any treaty concluded and ratified by Korea.

However, the inspection and search of foreign vessels should adhere to the treaties concluded and ratified by Korea or generally recognized international law.

The Aviation Safety Act

The Aviation Safety Act regulates the operation of an aircraft that has a foreign nationality (including a foreign country, a foreign public organization, or a person corresponding thereto) and conducts flight under one of the following conditions: (i) the aircraft takes off outside the airspace of Korea and lands at an airport in Korea; (ii) the aircraft takes off from an airport in Korea and lands outside the airspace of Korea; or (iii) the aircraft takes off outside the airspace of Korea, overflies the airspace of Korea without landing at an airport in Korea, and lands outside the airspace of Korea (see Article 100). The Minister of the Land, Infrastructure and Transport may restrict such flights under this Act if sanctions have been issued.

Customs Act

A person who exports or imports goods restricted under the Customs Act or any other relevant laws and regulations may be punished under Article 269 (*Offense of Smuggling*) of the Customs Act. Furthermore, a person who imports goods without fulfilling the necessary requirements for permission, recommendation, certification, or other conditions required by the law or who imports goods by illegal means after fulfilling such requirements or conditions is subject to punishment under Article 270 (*Offense of Evading Customs Duties*).

Act On The Arrival And Departure Of Ships

Article 4(3) (*Reports on Arrival and Departure*) of the Act on the Arrival and Departure of Ships stipulates that in the event of a war, incident, or any other national emergency of equal severity or if necessary for national security, the vessel's captain must obtain permission from the management authority.

Likewise, the management authority may issue an order for a ship in the water zone of a trade port to relocate to a designated area under Article 8 (*Order to Move Ships*) if deemed necessary in the event of a war, incident, or any other national emergency of equal severity, or if necessary for national security.

Selected Legislation In Depth

Act On Punishment Of Crimes Under Jurisdiction Of The International Criminal Court (ICC Act)

AREA OF LAW

Criminal

CONDUCT ADDRESSED

All conduct that can constitute crimes within the jurisdiction of the International Criminal Court (ICC), including: genocide; crimes against humanity; war crimes against individuals; war crimes against property and rights; war crimes against humanitarian activities; war crimes against distinctive emblems; war crimes using forbidden means; war crimes using forbidden weapons; dereliction of duties by commanders; and offenses against the administration of justice. This conduct may be subject to punishment under the ICC Act.

Article 18 (*Consideration of Elements of Crimes in Statute of International Criminal Court*) of the ICC Act permits the incorporation and consideration of the ICC Elements of Crimes adopted by the Assembly of States Parties to the Statute of the International Criminal Court.

SCOPE OF APPLICATION

Article 3 (*Scope of Application*) of the ICC Act specifies that it applies to the following: (1) any Korean national or foreigner who commits a crime provided for in the ICC Act within the territory of Korea; (2) any Korean national who commits a crime provided for in the ICC Act outside the territory of Korea; (3) any foreigner who commits a crime provided for in the ICC Act on board a vessel or

NATIONALITY REQUIREMENTS

aircraft registered in Korea, while outside the territory of Korea; (4) any foreigner who commits a crime provided for in the ICC Act against Korea or its people outside the territory of Korea; and (5) 'any foreigner who commits a crime under the Act outside the territory and [stays, resides, is] in the territory of Korea'.

Under Article 3 (*Scope of Application*) of the ICC Act there are no nationality requirements with respect to the victim specified in paragraphs (1), (2), (3), and (5) as noted above.

PRESENCE OF THE ACCUSED

In general, there is no specific law or regulation that requires the presence of the accused to be prosecuted or investigated. However, in practice, the prosecution may hold off or suspend the prosecution/investigation process under relevant laws when the police and/or prosecution cannot secure the presence of the accused.

Relevant to the potential exercise of universal jurisdiction for atrocity crimes, Article 3(5) notes that the ICC Act applies to 'any foreigner who commits a crime under the Act outside the territory and [stays, resides, is] in the territory of Korea'. The direct translation from Korean to English is 'is in the territory' suggesting that transit through or transfer to the territory of Korea would suffice. However, other translations within context give the term 'resides' or —as translated by the Korean government in its 2010 statement to the UN General Assembly Sixth (Legal) Committee—'stays'. As opposed to 'is', 'stays' implies a longer temporal-presence requirement than transit, which could include presence within Korean territory for the purpose of business or holiday. 'Resides' would imply an even longer requirement for presence, which could be interpreted as 'is ordinarily resident'.

To date, there has been no leading case in Korean courts to which the ICC Act has applied; therefore the necessary length and location of the accused's presence for the purposes of Article 3(5) of the ICC Act has not been litigated.

The Korean Constitution is also relevant to the discussion of presence. This is because Article 3 of the Korean Constitution states that '[t]he territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands'—encompassing the territory of the Democratic People's Republic of Korea (or North Korea).

PRESENCE OF THE ACCUSED (cont)

A 2016 report by the Korea Legislation Research Institute discussed how this may be interpreted:

In the past, theories were divided as follows:

(i) a viewpoint that construes North Korea as [an] unrecovered area or illegal anti-government organization based on [Supreme Court Judgement No 1959 Hyeongsang 48 rendered on Sep 28, 1961 and 96 Nu 1221 rendered on Nov 26, 1996];

(ii) a stance that construes North Korea as a government, deeming South and North Korea as one nation and two governments; and

(iii) a viewpoint that construes North Korea as an independent State, deeming the two Koreas as one nation and two States.

However, a recent decision of the Constitutional Court construes North Korea as an anti-government organization, and at the same time, as a partner for dialogue and cooperation for peaceful unification [as noted in the Constitution, Article 4], and such understanding is worth noting for unification.

[See, for example, Constitutional Court Decision, Case No 2012Hun-Ba95 decided on April 30, 2015].

FORUM, JURISDICTION, & PROCEDURE

If a case falls within the scope of application of the ICC Act, the Criminal Procedure Act applies to the general criminal procedures, including court jurisdiction.

Article 2 (*Improper Jurisdiction and Effect of Proceedings*) of the Criminal Procedure Act states that 'an action of litigation shall not lose effect by reason of improper jurisdiction'. Note, however, that a District Court is generally the court of first instance for criminal matters.

The public prosecutor initiates criminal cases, but private complaint or accusation may be made; the prosecutor may then investigate and determine 'whether public prosecution shall be instituted or not within three months after the complaint or accusation has been made' (Article 257 (*Case on Complaint*), Criminal Procedure Act, though see also Article 17, ICC Act).

According to Article 4 (*Territorial Jurisdiction*) of the Criminal Procedure Act, the court's territorial jurisdiction is determined by the place where the offence was committed, the criminal defendant's place of domicile or residence or, and perhaps most relevantly, the place where the criminal defendant is currently located (see above).

PRESCRIPTION/ STATUTE OF LIMITATIONS

Article 6 (*Non-Applicability of Statute of Limitations*) of the ICC Act states that the crimes given in the Act are not subject to the statutes of limitations for public prosecution provided in: Articles 249 through 253 of the Criminal Procedure Act; Articles 291 through 295 of the Military Court Act; and Articles 77 through 80 of the Criminal Act (on the statutes of limitations for the execution of guilty judgments).

ADDITIONAL NOTES

- The ICC Act, unlike the Rome Statute, does not distinguish between international and non-international armed conflicts. Additionally, 'command responsibility' is construed more narrowly under the ICC Act than in the Rome Statute.
- If necessary, Korea has domestic legislation governing international judicial mutual assistance. Although not updated at the time of writing, the general process for mutual legal assistance can be found here.
- To date, there has been no leading case in Korean courts to which the ICC Act has applied. However, recognition of the Rome Statute has played a role in domestic compensation orders (discussed further below). For example, in 2022, the Seoul Central District Court ordered North Korea and Kim Jong-un to compensate a family member of a South Korean who was abducted to North Korea during the 1950-1953 Korean War based on the Geneva Convention Relating to the Protection of Civilian Persons in Time of War of August 12, 1949, as well as the Rome Statute.¹²

12. Seoul Central District Court Decision, 2020Ka-Dan5306603 decided on March 25, 2021.

Civil Act Of Korea (Civil Act) & Related Acts For Civil Claims

AREA OF LAW

Civil

CONDUCT ADDRESSED & SCOPE OF APPLICATION

Relevant to this brief, Article 750 of the Civil Act defines torts as '[a]ny individual who causes losses or inflicts injuries on another person through an unlawful act, whether intentionally or negligently, is obligated to provide compensation for resulting damages'. These torts may occur outside of the territory of Korea (see examples of compensation below).

NATIONALITY REQUIREMENTS

There is no specific Korean law that limits the right to sue or the ability to be sued based on nationality.

PRESENCE OF THE ACCUSED & SERVICE

The physical presence of the defendant is not required in a Korean lawsuit. However, the defendant must be properly served with the court documents. According to Article 191 (*Method of Service in Foreign Country*) of the Civil Procedure Act, if service is to be effected in a foreign country, the presiding judge will entrust the service to the Korean ambassador, minister, or consul stationed in that country, or to the competent government authorities of that country.

If the defendant is a Korean national residing outside of Korea, service can be entrusted to the Korean ambassador, minister, or consul in the foreign country, the competent court or public office of the foreign country or the relevant government agency of the foreign country under the Hague Service Convention or a bilateral treaty.

If the defendant is a foreigner residing outside of Korea, service can be entrusted to the relevant government agency of the foreign country under the Hague Service Convention or a bilateral treaty, as applicable, or to the competent court or other public offices of the foreign country.

However, if the defendant's domicile or workplace is unknown or it is impossible to comply with the provisions of Article 191 of the Civil Procedure Act—or even if the provisions are complied with—the service may be made by public notice under Article 194 (*Requirements for Service by Public Notice*), Article 195 (*Method of Service by Public Notice*), and Article 196 (*Taking Effect of Service by Public Notice*) of the Civil Procedure Act. In such cases, a

PRESENCE OF THE ACCUSED & SERVICE (cont)

court's junior administrative officer may keep the documents to be served and post the reasons for service on the court's bulletin board or by other means prescribed by the Supreme Court Regulations. In cases of service to be effected in a foreign country, service by public notice takes effect two months after the posting.

JURISDICTION

If the matter involves a tort, the domestic law governing the tort is the Civil Act. In general, a tort case can be brought before any District Court with relevant jurisdiction over the matter. However, assuming a tort has taken place outside Korea, the Act on Private International Law (the 'Private International Law Act') applies (see Article 1 (*Purpose*)).

Under Article 2(1) (*General Principles*) of the Private International Law Act, the relevant Korean court has jurisdiction if a party or case in dispute has 'a substantial connection' with Korea. To determine whether a substantial connection exists, the court must use reasonable principles that 'promote impartiality between the parties' and ensure 'appropriateness, speediness, and economy of adjudication'. For the Supreme Court's interpretation of 'a substantial connection' or 'substantive relations', see Supreme Court Decision 2016Da33752, decided June 13, 2019.

No publicly available Korean tort cases involving foreign victims and illegal acts occurring outside of Korea were located in the preparation of this brief.

However, it is worth noting that there is one case involving a Chinese national, Party A, who operated a money-lending business in China and entered Korea to do the same. Party B and their partner, also Chinese nationals, resided in Korea and operated a real estate development business. Party A filed a lawsuit in a Korean court against Party B for the return of a loan that he had lent to them in China.

The court held that the lawsuit had substantive ties to Korea based on the circumstances as a whole, and therefore the Korean court had international jurisdiction over the case.

See Supreme Court Decision 2016Da33752 decided June 13, 2019.

JURISDICTION (cont)

The Private International Law Act also sets out various regulations regarding the court's jurisdiction. For instance, Article 44 (*Special Jurisdiction over Lawsuit Regarding Torts*) allows a lawsuit regarding torts to be filed with the court where the tort occurred in or toward Korea or where the consequences of the tort occurred in Korea unless it is impossible to predict such consequences. If the court has jurisdiction under any other article of the Private International Law Act, the District Courts of Korea may also have jurisdiction over the case. For example, if the defendant has a habitual residence in Korea, the Korean courts may have jurisdiction under Article 3 (*General Jurisdiction*).

However, Article 5 (*Special Jurisdiction over Location of Property*) of the Private International Law Act states that even if the property that is the subject of the claim or security is located in Korea, the court may not have jurisdiction over the case if any seizable property of the defendant in Korea is not or only slightly related to Korea, or if the value of such property is considerably low.

APPLICABLE LAW

Even if it is found that a Korean court has jurisdiction to hear a case, the governing law will still need to be determined separately. Article 52 (Torts) of the Private International Act states the following:

(1) *A tort shall be governed by the law of the place where it is committed or where the consequences thereof occur.*

(2) *Notwithstanding paragraph (1) above, if the tortfeasor and the injured party have their habitual residences in the same country where the tort is committed, the law of that country shall govern (emphasis added).*

(3) *In cases where a tort violates an existing legal relationship between the tortfeasor and the injured party, the law applicable to such legal relationship shall govern, notwithstanding paragraphs (1) and (2) above.*

(4) *In cases where a foreign law is applied under paragraphs (1) through (3) above, the right to claim compensation for damages resulting from a tort shall not be recognized if the nature of such right is not evident for the purpose of paying due compensation to the injured party or if such right is exercised beyond the scope essentially necessary for the payment of due compensation to the injured party.*

PRESCRIPTION/ STATUTE OF LIMITATIONS

The prescription for a right to claim is a matter related to that right, and as such, the same law governs both the right and the prescription on that right.

Therefore, if Korean law governs a right to claim damages arising from tort, the provisions relating to prescription in the Civil Act will apply.

For example, Article 766 (*Prescription in Respect of Right to Claim for Damages*) of the Civil Act provides that the right to claim for damages resulting from an unlawful act shall lapse by prescription if the right is not exercised: (1) within three years commencing from the date on which the injured party or their legal representative becomes aware of such damage and of the identity of the person who caused it; or (2) if ten years have elapsed from the time when the unlawful act was committed.

However, the prescription period begins to run when a right is objectively established and becomes exercisable. It stops when it is not exercisable because the period does not start or the condition is uncompleted. Negligence in not knowing the existence of a right, or even non-negligence in not knowing, does not constitute legal grounds for its stay.

COMPENSATION & DAMAGES

The Civil Act has two important provisions requiring a form of compensation be paid in tort matters. These include:

Article 751 (*Compensation for Non-Economic Damages*)

(1) An individual who has caused harm to another person or his/her liberty or reputation or has inflicted mental anguish upon another person, is responsible for providing compensation for resulting damages.

(2) The court has the authority to order the responsible party to make compensation as mentioned in paragraph (1) above through periodic payments, and may require the responsible party to provide reasonable security to ensure compliance with their obligations.

Article 752 (*Consolation Money where of Violation of Life*)

If an individual causes the death of another person, they are responsible for paying damages to the deceased person's lineal ascendants, lineal descendants and spouse, regardless of whether any economic damages result from the death.

COMPENSATION & DAMAGES (cont)

According to Article 763 of the Civil Act, Articles 393 (*Scope of Compensation of Damages*) and 394 (*Method of Compensation for Damages*) apply to torts matters.

Under these Articles, compensation for damages arising from an unlawful act shall be limited to ordinary damages. The obligor is responsible for reparation of damages that have arisen through special circumstances only if they could have foreseen such circumstances. Finally, unless the parties have agreed otherwise, damages shall be recovered in money.

Relevant Practice and Case Summaries

Criminal Law

First Korean Prosecution For Piracy

In 2011, the Busan District Court heard Korea's first criminal trials for piracy. The defendants were five Somali men who hijacked a chemical tanker in international waters off the coast of Somalia. The tanker was Norwegian-owned and Malta-registered, but was operated by Samho Shipping of Korea. During an attempted rescue operation by a Korean naval unit, the Korean captain of the vessel was shot and eight hijackers were killed.

According to Seokwoo Lee and Young Kil Park, the District Court's jurisdiction derived from: Article 105, United Nations Convention on the Law of the Sea; Article 6, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; Article 5, International Convention against the Taking of Hostages; Article 6, domestic Criminal Act (Foreign Crimes against the Republic of Korea and Korean Nationals outside Korea); and Article 3 (*Scope of Application to Foreigners*), Act on Damaging Ships. All five men were found guilty; the Busan District High Court affirmed the findings of guilt.

Following the hijacking, the Korean Ministry of Justice proposed an amendment to the Criminal Act that would establish universal jurisdiction for 'crimes punishable pursuant to treaties binding upon the Republic of Korea'. However, the amendment was not passed by the National Assembly.

Civil Law

Enforcement Of The Foreign Individuals' Assets Located In The Territory Of Korea

In December 2021, a Korean court ordered the sale of assets seized from Nippon Steel Corp. to compensate Korean plaintiffs in a World War II forced labor court case against Japan's Nippon Steel Corp. The assets in question were seized by the court after Nippon Steel failed to pay damages to four Korean plaintiffs following an October 2018

Supreme Court ruling that found the men were mobilized to work for Japan Iron & Steel Co, Nippon Steel's predecessor, in the 1940s during Japanese colonial rule of the Korean Peninsula.

Despite the compensation order, Nippon Steel did not comply, as it followed the Japanese government's position that the issue of claims stemming from the 1910–1945 colonial rule was settled in 1965 under a bilateral accord signed alongside a treaty that established diplomatic ties. In response, the plaintiffs had a portion of the company's shares in POSCO–Nippon Steel RHF Joint Venture, which involves South Korean steelmaker POSCO, seized via the court. In May 2019, the plaintiffs requested that the court order the sale of the shares, leading to the court ruling.

Cases With Foreign Government Defendants (Other Than North Korea)

Addressing State Immunity

Generally, Korean courts have recognized State immunity based on principles of customary international law. However, Korea has not ratified any multilateral treaty or convention directly related to State immunity, including the United Nations Convention on Jurisdictional Immunities of States and Their Property. Additionally, Korea does not have national legislation on state immunity.

Under the doctrine of State immunity, a court of one State is prohibited from exercising jurisdiction over a sovereign act of another State. State immunity should be considered at two procedural levels: (i) jurisdictional immunity, which exempts a State from the jurisdiction of another State, and (ii) immunity from execution, which allows a State to resist the execution of a judgment or arbitral award in another State against its assets.

Regarding jurisdictional immunity, the Korean Supreme Court currently recognizes restrictive immunity. This means that a State is exempted from the jurisdiction of courts of another State as long as the subject matter of the litigation concerns its sovereign acts, though such exemption does not extend to a State's act under private law.¹³

State immunity arises in recent claims for damages for Korean 'comfort women' victims of Japan's military sexual slavery before and during World War II. However, Korean courts' position on the State immunity of the Japanese Government has been uncertain and one court has issued conflicting rulings on the matter.

In January 2021, the Seoul Central District Court ruled that the Korean court has jurisdiction over the Japanese government and that State immunity cannot be applied to military sexual slavery, even though the acts constituted 'sovereign acts'. This was because of the specific circumstances of the case: the crimes were crimes against humanity, committed systematically and extensively by Imperial Japan in violation of international *jus cogens*; and the crimes were against individuals who are Korean nationals and were in the Korean Peninsula, which was under illegal occupation by Imperial Japan at the time.¹⁴

13. Supreme Court Decision, 97Da39216 decided on December 17, 1998.

14. Seoul Central District Court Decision, 2016Ga-Hap505092 decided on January 8, 2021 (unofficial translation https://womenandwar.net/kr/wp-content/uploads/2021/02/ENG-2016_Ga_Hap_505092_23Feb2021.pdf?ckattempt=1).

However, in April 2021, the Seoul Central District Court also dismissed a similar case filed by Korean comfort women victims against the Japanese government, stating that it was not within the exception of State immunity for the Japanese government.¹⁵ There, the Court found that a *jus cogens* exception to State immunity has not yet crystallized as customary international law.

Regarding immunity from execution, there have yet to be any Korean Supreme Court cases directly on this point. Instead, available analysis (omitted from this brief) is mainly based on customary international jurisdiction to an attachment and collection order where a third-party debtor is a foreign State.

The customary international law on State responsibility is codified in the [International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts](#).

Under Draft Article 1, any breach of international law by a State or its organs (including effected through domestic court decisions) attracts responsibility under international law.

Service Of Process

In Korean court practice, the determination of whether the court has jurisdiction to hear a dispute is made after the service of process. Therefore, when a foreign State defendant is involved, it is served with the plaintiff's complaint regardless of the Korean court's jurisdictional decision. After the service, the Korean court examines the issue of jurisdictional immunity to determine whether it has jurisdiction over the case.¹⁶

The method of service on a foreign State varies depending on whether that State is a party to the [Hague Service Convention](#), to which Korea is a party. If the foreign State is also a party, the Korean courts implement service through the central authority. If the defendant foreign State is not a party but is instead party to a bilateral treaty with Korea that deals with judicial assistance including international service, the foreign State would be served in accordance with that treaty. If the State is neither a party to the Hague Service Convention nor a bilateral treaty with Korea, the State would be served through diplomatic channels (eg through the Korean Embassy in the State and the State's Ministry of Foreign Affairs).

Notably in December 2016, 12 Korean 'comfort women' victims and surviving family members [filed a lawsuit](#) against the Japanese government in the Seoul Central District Court. The Japanese government had been delaying the trial by refusing to accept the lawsuit documents, but the Court eventually posted the relevant document on its message board (service by public notice), allowing the Court to assume that Japan had been served the necessary legal documents.

However, Korean courts' position on the service of process against foreign States and entities within those States remains unstable. In 2022, a Korean NGO filed a lawsuit against the Wuhan (China) municipal government for its inappropriate handling of COVID-19, but the municipal government rejected receiving the plaintiff's complaint. The Seoul Central District Court [dismissed the case without prejudice](#) (link in Korean),

15. Seoul Central District Court Decision, 2016Ga-Hap 580239 decided on April 21, 2021 (see <https://m.lawtimes.co.kr/Content/Case-Curation?serial=25264&t=c> (Korean only)).

16. Ministry of Court Administration of Supreme Court, Civil Procedure Practice Summary III at pp 637-638.

stating that it could not duly serve the complaint as the court does not have jurisdiction over entities in a foreign country—this is despite the fact that the same court accepted the service by public notice in the Japanese government case mentioned above.

Enforcement

Even with a positive ruling, it is not easy to execute against the assets of a foreign State in practice.

In the January 2021 matter discussed above, the Seoul Central District Court ordered Japan to pay KRW 100 million each to the 12 plaintiffs and their surviving family members.¹⁷ The Japanese government did not participate in the proceedings and protested the decision for violating its sovereign immunity. In 2022, the Court attempted to serve its order to release State assets for the purposes of reparations. However, the Japanese government first rejected receipt of such documents, citing an error in translation during the first service of process, and then rejected them again, stating that such service of process would infringe on the sovereignty and security of Japan. The Court ultimately dismissed the case without prejudice for failure of service (regarding the exclusion of service by public notice for compulsory disclosure of property, see Article 62(5) of the Civil Execution Act; for plaintiffs' potential next steps see Article 74 (*Inquiry about Property*)).

Cases With Government of North Korea As A Defendant

Legal Characteristics Of North Korea Under Korean Law

It is a matter of great controversy whether a lawsuit can be filed in a Korean court against North Korea. This is because there is no clear consensus among Korean courts as to whether North Korea should be classified as a country or an unincorporated association within the territory of Korea.

In October 2016, two former prisoners of war filed a lawsuit against North Korea and Kim Jong Un (as a descendant of Kim Il Sung) for forced labour in North Korea after the Korean War ceasefire agreement (links in Korean). Liability was argued under Article 35 (*Capacity of Juristic Person to Assume Responsibility for Unlawful Act*) of the Civil Act; however, at issue was whether North Korea—as an entity—could be a party to the suit. To be a party to a civil suit, the entity must have the 'capacity for being a party', which includes natural persons, corporations, and associations that are not juristic persons (eg unincorporated associations, such as churches, societies, or alumni associations).

The court accepted the plaintiffs' argument that North Korea does not receive State immunity and can be a defendant as an unincorporated association legally similar to a local organization. As a result, the court upheld the plaintiffs' claim for damages.¹⁸

Following the suit, surviving families of abductees and victims of communist guerrillas filed similar lawsuits against North Korea and won their cases.¹⁹

17. Seoul Central District Court Decision, 2016Ga-Hap505092 decided on January 8, 2021. See also [here](#).

18. Seoul Central District Court Decision, 2016Ka-Dan5235506 decided on July 7, 2020.

19. Seoul Central District Court Decisions, 2020Ka-Dan5306603 decided on March 25, 2021 and 2020Ka-Hap2804 decided on May 20, 2022.

Enforcement Against North Korea

Plaintiffs have attempted to collect North Korean State assets located in the Republic of Korea, but this has been difficult because of a lack of legal clarity on asset ownership.

In 2004, the Foundation of Inter-Korea Cooperation (FIKC) was established to facilitate inter-Korean civilian exchange and cooperation. In 2005, the FIKC was delegated domestic copyrights for publications and broadcasts made in North Korea, including videos from North Korea's Korean Central TV used by domestic broadcasters. However, due to political reasons, the FIKC has been depositing copyright fees to the Korean court since August 2008, as remittances of copyright fees were banned due to the sanctions against North Korea. As of September 2022, the deposit is estimated to have reached KRW 2.3 billion ([link in Korean](#)).

Recently, a Korean court ruled that the deposited fees cannot be used to compensate victims, as North Korea is neither a country nor an unincorporated association under Korean law, and North Korea does not have any rights to the deposited assets ([link in Korean](#)). Moreover, even if North Korea were considered an unincorporated association under Korean law, the deposited fees are owned by individual copyright holders, not by North Korea itself.

At the time of writing, the relevant plaintiffs have appealed, and the case is still pending in the High Court.

Project Background

Recognising the opportunities to address atrocity crimes in Asia, the AJC secretariat has commissioned and edited several reports on legal avenues to justice and accountability in the region. These include briefs on available legislation and causes of action for survivors of atrocity crimes in 9 Asian jurisdictions; a two-part report on making sanctions a stronger tool for accountability; and primers related to strategies to address refoulement.

This series, 'Jurisdictional Briefs for International Justice in Asia', considers existing legal "hooks" that practitioners might consider if supporting survivors of international crimes.

It builds on the AJC secretariat's scoping work on universal jurisdiction and its convening series, bringing together a diverse group of experts to examine civil society's role in pursuing universal jurisdiction cases, universal jurisdiction and the so-called Global South, and opportunities for universal jurisdiction cases in Asia.

Acknowledgements

The Asia Justice Coalition secretariat is particularly grateful to the law firms providing pro bono research and drafting support for this chapter, contributed through their partnerships with PILnet, and to our pro bono reviewer Dr Daye Gang.

Although broader, these reports are inspired by and modelled on the Syria Justice and Accountability Centre's resource 'A Summary of Legal Avenues for Victims of Crimes in Syria under US Law.'

About The Asia Justice Coalition

Founded in 2018, the Asia Justice Coalition's purpose is to improve the legal landscape in Asia to ensure justice and accountability for gross violations of international human rights law and serious violations of international humanitarian law. The Coalition operates through collaboration, resource-sharing, and coordinating efforts between local and international civil society organizations working in the region. Its work is accomplished by undertaking joint activities relating to justice and accountability and engaging in collective advocacy.



www.asiajusticecoalition.org