



The Republic of Korea's Compliance with International Convention for the Protection of All Persons from Enforced Disappearance

Suggested List of Themes

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and

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The Transitional Justice Working Group (TJWG) is a human rights documentation NGO established in Seoul in 2014 that aims to develop the best practices to address mass human rights violations and to realize victim-centered approach and justice in societies that are making a transition from or have yet to make a transition from armed conflict or dictatorship.

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

Anti Death Penalty Asia Network (ADPAN) is the peak regional body for organisations and individuals committed to the abolition of the death penalty across the Asia Pacific, with members from 20 countries within the region. As such, ADPAN maintains that the death penalty violates the right to life, that it is the ultimate form of cruel, inhuman, and degrading punishment and that the death penalty should be entirely abolished internationally.

This report examines a number of issues for inclusion in the list of themes. The first concerns the three points related to the two domestic implementing bills for the Enforced Disappearance Convention pending in the 22nd National Assembly (section 1), namely: the criminalization of enforced disappearance committed by North Korea (DPRK) and other “non-states” with respect to article 4 of the Convention (section 1-1) and the application of the non-refoulement rule to North Korea and other “non-states” with respect to article 16 of the Convention (section 1-2), arising from the peculiar legal status of North Korea (DPRK) in South Korean law, and the death penalty provision with respect to article 7 of the Convention (section 1-3).

The report also covers South Korea’s policy and practice concerning *refoulement* where there are substantial grounds for believing that they would be in danger of being subjected to enforced disappearance with respect to article 16 of the Convention in relation to North Korean escapees (section 2-1) and other foreign nationals (section 2-2) and the National Intelligence Service (NIS)’s formalized role in the Ministry of Justice (MOJ)’s internal review body, the Refugee Committee, for refugee applications (section 2-3).

Lastly, the report provides a list of suggested questions to be posed to the government (section 3).

1. The two domestic implementing bills for the Enforced Disappearance Convention pending in the 22nd National Assembly

There are currently two bills pending before the 22nd National Assembly (30 May 2024 – 29 May 2028), proposed respectively by members of the two main political parties: the Kim Gi-hyeon bill (bill no. 2201373) proposed on 4 July 2024 and the Kim Young-bae bill (bill no. 2204872) proposed on 24 October 2024 (see Annex).

Both bills are mostly similar in content and apparently based on the drafts discussed by the Enforced Disappearance Convention implementing legislation committee [법무부 강제실종방지협약 이행 입법위원회], which was convened by the Ministry of Justice in October 2020. The committee, composed of officials from the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of National Defense and senior jurists and experts of international law, human rights law and criminal law, held in-depth discussion for a year and a half. It was headed by Judge O-Gon Kwon, who presided over the trial of Radovan Karadžić at the International Criminal Tribunal for the former Yugoslavia (ITCY) and served as the President of the Assembly of States Parties to the Rome Statute of the ICC.

Article 3 of the Constitution of the Republic of Korea provides that “The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands”. It has been the consistent South Korean constitutional practice since the establishment of the Republic of Korea in 1948 that North Korea (DPRK) is “an anti-state organization [반국가단체]” unlawfully occupying a portion of its sovereign territory. North Korea therefore is not considered “a state” under South Korean law.

1-1. The criminalization of enforced disappearance committed by North Korea (DPRK) and other “non-states” with respect to article 4 of the Convention

In 2014, the United Nations Commission of Inquiry on human rights in the DPRK (COI DPRK) found that: “from 1950 until the present, the DPRK has engaged in the systematic abduction, denial of repatriation and subsequent enforced disappearance of persons from other countries on a large scale and as a matter of State policy. Well over 200,000 persons who were taken from other countries to the DPRK may have potentially become victims of enforced disappearance, as defined in the Declaration for the Protection of All Persons from Enforced Disappearance.”¹

The COI DPRK added that: “The vast majority of abductions and enforced disappearances occurred during or are otherwise linked to the Korean War and the organized movement of ethnic Koreans from Japan that started in 1959. However, hundreds of nationals of the ROK, Japan and other states were also abducted and disappeared between the 1960s and 1980s. In more recent years, the DPRK abducted a number of DPRK and ROK nationals from the People’s Republic of China.”²

Because South Korea does not consider North Korea “a state”, under South Korea’s interpretation and application of the definition of “enforced disappearance” in article 2 of the Convention, acts perpetrated by North Korea or its agents will not constitute the crime of enforced disappearance unless an additional condition or clarification is added.

The Kim Gi-hyeon bill provides the definition of “enforced disappearance” in article 3 that “acts of organs of anti-state organization under article 2(1) of the National Security Act or acts done under the authorization, support or acquiescence of the anti-state organization are also considered acts of the enforced disappearance actors, etc.

The definition of “enforced disappearance” in article 3 of the Kim Young-bae bill does not contain similar a proviso.

On June 9, 2025, the National Human Rights Commission adopted a set of recommendations urging the speedy adoption of legislation for the domestic implementation of the Enforced Disappearance Convention.³ The first of Commission’s recommendations was that:

¹ Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, A/HRC/25/CRP.1 (7 February 2014), para. 1011.

² Ibid, para. 1013.

³ National Human Rights Commission, “An opinion expressed to speedily work out legislative act for effective domestic implementation of the Enforced Disappearance Convention [「강제실종방지협약」의 실효적 국내 이행을 위한 법률 조속히 마련하도록 의견표명]” (2025-07-02), <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7611312> [in Korean]

1. With respect to the definition of “enforced disappearance”, stipulate in a manner that includes North Korea in “enforced disappearance actor, etc.”, taking into consideration the proposal to express the agent of enforced disappearance as “a State or a political organization” like article 9(2)(8) of the Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court or the proposal to express it as “all entities that have the capacity to sign, ratify or accede to this Convention in accordance with article 38 of the Enforced Disappearance Convention” in light of North Korea’s status for the purpose of international conventions.⁴

The National Human Rights Commission’s recommendation, in particular the reference to “all entities that have the capacity to sign, ratify or accede to this Convention in accordance with article 38 of the Enforced Disappearance Convention”, all Member States of the United Nations in other words, appears to provide the most elegant solution using neutral language. It also has the added advantage of ensuring that enforced disappearance committed by a UN member state that is not recognized as a state by South Korea for various reasons in the future (there are currently none) will be criminalized under South Korean law.

Given the subjective nature of state recognition, the Committee may consider providing general guidance on the matter. This issue arises again with respect to the non-refoulement rule.

1-2. The application of the non-refoulement rule to North Korea and other “non-states” with respect to article 16 of the Convention

Similar to the definition of enforced disappearance, because South Korea does not consider North Korea “a state”, refoulement to North Korea will not be considered a refoulement to “another State” under article 16 of the Convention unless an additional condition or clarification is added.

The non-refoulement clause in article 15 of the Kim Gi-hyeon bill and article 17 of the Kim Young-bae bill does not address this concern.

As described below in section 2-1, this is not merely a theoretic consideration, but a legal loophole that could allow the repetition of refoulement of North Korean escapees.

⁴ The Korean original is: “1. ‘강제실종’의 정의와 관련하여, 강제실종 행위 주체를 「국제형사재판소 관할 범죄의 처벌 등에 관한 법률」(이하 ‘국제형사범죄법’이라 한다) 제9조 제2항 제8호와 같이 ‘국가 또는 정치단체’로 표현하는 방안, 북한의 국제협약상 지위를 참조하여 ‘강제실종방지협약 제38조에 따라 이 협약에 서명·비준·가입할 수 있는 모든 주체’로 표현하는 방안 등을 고려하여 ‘강제실종행위자등’에 북한이 포함될 수 있도록 규정할 것.”

The National Human Rights Commission recommended in its opinion of June 9, 2025 that:

5. Prohibit forcible repatriation to North Korea taking into consideration proposals to include North Korea among states to which the prohibition of forcible repatriation, etc. applies, as mentioned in paragraph 1, to express the agent of enforced disappearance as “a State or a political organization” like article 9(2)(8) of the Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court or to express it as “all entities that have the capacity to sign, ratify or accede to this Convention in accordance with article 38 of the Enforced Disappearance Convention” in light of North Korea’s status for the purpose of international conventions.⁵

Again, the National Human Rights Commission’s recommendation, in particular the reference to “all entities that have the capacity to sign, ratify or accede to this Convention in accordance with article 38 of the Enforced Disappearance Convention”, all Member States of the United Nations in other words, appears to provide a solution using neutral language that covers all 193 UN member states.

However, this will still leave open the possibility of refoulement to non-UN member states where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance. There is also the risk of deportation to non-state actors exercising *de facto* government functions.

A more complete solution therefore would be to include unrecognized states and “non-state actors that exercise government-like functions and *de facto* control over territory and population must respect and protect the human rights of individuals and groups”.⁶

⁵ The Korean original is: “5. ‘강제송환 등의 금지’ 적용 대상 국가에 ‘북한’이 포함될 수 있도록, 강제송환 금지 대상 ‘국가’를, 제1항에서 언급한 것처럼, 국제형사범죄법 제9조 제2항 제8호와 같이 ‘국가 또는 정치단체’로 표현하거나, 북한의 국제협약상 지위를 참조하여 ‘강제실종방지협약 제38조에 따라 이 협약에 서명·비준·가입할 수 있는 모든 주체’로 표현하는 방안 등을 고려하여 북한으로의 강제송환을 금지할 것”

⁶ OHCHR, “Joint Statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors” (25 February 2021), <https://www.ohchr.org/en/press-releases/2021/02/joint-statement-independent-united-nations-human-rights-experts-human-rights> WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances”, A/HRC/42/40 (30 July 2019), para. 94, <https://undocs.org/A/HRC/42/40> A/HRC/WGEID/1: Revised methods of work of the Working Group on Enforced or Involuntary Disappearances, adopted in February 2023 (6 April 2023), para. 33, <https://www.ohchr.org/en/documents/working-methods/ahrcwgeid1-revised-methods-work-working-group-enforced-or-involuntary> OHCHR, “Fact Sheet No. 6 (Rev. 4): Enforced Disappearances” (31 March 2023), p. 36, <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-6-rev-4-enforced-disappearances> OHCHR, “Afghanistan: Four years after Taliban takeover, UN experts repeat warning against normalisation of gender oppression”, <https://www.ohchr.org/sites/default/files/statements/Taliban-takeover-gender-oppression-Afghanistan->

Given the subjective nature of statehood, the non-*refoulement* clause of future human rights treaties, such as the proposed Convention on Prevention and Punishment of Crimes Against Humanity, should revise the standard language to provide broader protection against *refoulement*.

1-3. The death penalty provision with respect to article 7 of the Convention

Article 10(1) of the Kim Gi-hyeon bill and article 11(1) of the Kim Young-bae bill both provides that a person who commits [the crime of enforced disappearance], thereby killing a person subjected to enforced disappearance shall be punished by death or imprisonment for life or for not less than 7 years.

Article 13 of the Criminal Act, which is a part of the General Provisions of the Criminal Act, stipulates that acts committed without criminal intent are, as a rule, not punishable unless provided otherwise and, by virtue of article 8 of the Criminal Act, the General Provisions of the Criminal Act applies to all criminal provisions in the Criminal Act and other laws.⁷ Article 10(1) of the Kim Gi-hyeon bill and article 11(1) of the Kim Young-bae bill, if enacted, would therefore allow a death sentence for the intentional killing of a person subjected to enforced disappearance.

Article 250 of the Criminal Act, read in conjunction with article 13 of the Criminal Act, provides that a person who kills another, intentionally, shall be punishable by death or imprisonment for life or for not less than 5 years. The punishment prescribed in article 10(1) of the Kim Gi-hyeon bill and article 11(1) of the Kim Young-bae bill, including the death penalty, appears to have been calculated taking article 250 of the Criminal Act into consideration.

The death penalty for the intentional killing of a person subjected to enforced disappearance appears to be in line with article 6(2) of the ICCPR permitting the imposition of a death sentence only for “the most serious crimes”, which has been interpreted as “crimes of extreme gravity involving intentional killing” by the Human Rights Committee⁸ and the Human Rights Council in its resolutions 48/9 of 8 October 2021, 54/35 of 13 October 2023 and 60/17 of 7 October 2025.

However, the death penalty provision in article 10(1) of the Kim Gi-hyeon bill and article 11(1) of the Kim Young-bae bill clearly violates the Human Rights Committee’s restatement in paragraph 34 of general comment no. 36 that “States parties may not transform into a capital offence any offence that, upon ratification of the Covenant or at any time thereafter, did not entail the death penalty”.

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⁷ Criminal Act [Enforcement Date 08. Aug, 2023.] [Act No.19582, 08. Aug, 2023., Partial Amendment], <https://www.law.go.kr/lsInfoP.do?lsiSeq=253323&viewCls=engLsInfoR>

⁸ Human Rights Committee, General comment No. 36: Article 6: right to life, CCPR/C/GC/36 (3 September 2019), para. 35.

In addition, it is important to note that South Korea is a *de facto* abolitionist state as it has last carried out executions in December 1997, though there are 57 people on death row as of June 2025. There is also a case pending before the Constitutional Court, originally filed in 2019, challenging the constitutionality of the death penalty (case no. 2019 Hun-Ba 59), but as of February 2026, no ruling has been made. This is the third case before the Constitutional Court which twice upheld the constitutionality of the death penalty by a 7-2 vote on 28 November 1998 (case no. 95 Hun-Ba 1) and by a 5-4 vote on 25 February 2010 (case no. 2008 Hun-Ga 23).

Therefore, the government and the National Assembly should enact an implementing bill without creating new capital offenses.

2-1. South Korea's policy and practice concerning refoulement of North Korean escapees with respect to article 16 of the Convention

On 7 November 2019, the Government deported two defectors from North Korea suspected of committing a mutiny and murder of 16 crew members aboard a fishing vessel before their defection on 2 November. The Government claimed that deportation was justified since they were “grotesque criminals” and not “sincere” defectors.⁹

On 28 January 2020, the UN Special Rapporteur on the situation of human rights in the DPRK, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint allegation letter to South Korea stating that they “are deeply concerned about the decision made by [the South Korean] Government of repatriating both individuals to the Democratic People's Republic of Korea where citizens often face serious human rights violations upon return according to our well-documented cases, including enforced disappearance, arbitrary execution, torture and ill-treatment, and trials that do not conform to international standards for fairness”.¹⁰

The Human Rights Committee (HRC) in October 2023 (CCPR/C/KOR/CO/5, paras. 37-38), the Committee against Torture (CAT) in July 2024 (CAT/C/KOR/CO/6, paras. 30-31) and the Committee on the Elimination of Racial Discrimination (CERD) in May 2025 (CERD/C/KOR/CO/20-22, paras. 31-32) raised concerns about refoulement of North Korean escapees and recommended legal reform to protect them against such refoulement.

⁹ Hyonhee Shin, *South Korea forcibly deported only two of 200 North Korean fishermen since 2010, ministry says*, Reuters, July 15, 2022, accessed Jan. 24, 2025, <https://www.reuters.com/world/asia-pacific/skorea-forcibly-deported-only-two-200-nkorean-fishermen-since-2010-ministry-2022-07-15>

¹⁰ Mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Information received concerning the announcement made by the Government of the Republic of Korea on 7 November 2019*, AL KOR 3/2019, (Jan. 28, 2020), 1, accessed Jan. 24, 2025, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24975>.

2-2. South Korea's policy and practice concerning refoulement of other foreign nationals with respect to article 16 of the Convention

South Korea has deported a number of other foreign nationals who were subsequently subjected to enforced disappearance.

On 21 March 2012, an Uzbek asylum-seeker was deported for using a fake passport even though it was necessary to flee to South Korea because he was already being targeted by the Uzbek authorities for his wife's wearing of a hijab.¹¹ He was reported as missing by his family after repatriation from South Korea to Uzbekistan.

On 26 November 2024, the South Korean police announced that an Uzbek national on Interpol's wanted persons list for an assassination attempt on a former presidential aide in Uzbekistan on 26 October 2024, was arrested three days earlier on 23 November and has since been deported to Uzbekistan. It is questionable that the deported Uzbek national, who had fled to South Korea on a tourist visa, had an opportunity to challenge the deportation order in court in less than three days following his arrest or that South Korea sought credible and effective assurances from Uzbekistan against exposing him to the risk of enforced disappearance and other human rights violations have been obtained.¹²

On 28 April 2022, South Korea deported Jin Yinsu, or "Mr. Kim," a Chinese national of Korean ethnicity who had fled China after killing a Chinese police officer in November 1993, following his arrest by the South Korean authorities in November 2019 and the dismissal of his administrative lawsuits against the deportation order of 14 May 2020 by the Daejeon District Court on 28 January 2021 (case no. 2020 Gu-Dan 850), the Daejeon High Court on 16 September 2021 (case no. 2021 Nu 10406) and the Supreme Court on 27 January 2022 (case no. 2021 Du 56329).¹³ Mr. Jin's fate and whereabouts remain unknown.

The Committee on the Elimination of Racial Discrimination (CERD) in May 2025 (CERD/C/KOR/CO/20-22, paras. 29-30) raised concerns about refoulement to China and recommended that South Korea should guarantee respect for the principle of non-refoulement, including by ensuring that the right of asylum-seekers to lodge asylum applications at ports of entry is

¹¹ Ji-Heon Kim, *정부, 난민신청 우즈베크인 강제송환 논란 (Controversy over government's forcible repatriation of Uzbek who had applied for asylum)*, Yonhap News, Apr. 3, 2012, accessed Jan. 24, 2025, <https://www.yna.co.kr/view/AKR20120402109200004>.

¹² Kim Hyun-soo, *S. Korea extradites suspect in assassination attempt on Uzbek official*, Yonhap News, Nov. 26, 2024, accessed Jan. 24, 2025, <https://en.yna.co.kr/view/AEN20241126008400315>; Lee Dong-hwan, *Suspect in Uzbek politician assassination attempt caught and deported from Korea*, Yonhap News, Nov. 26, 2024, accessed Jan. 24, 2025, <https://www.yna.co.kr/view/AKR20241126107600004>; Chae, Mine-seok, *Interpol Red Notice suspect wanted for assassination attempt of high-ranking Uzbek politician arrested in Korea*, Seoul Economic Daily, Nov. 26, 2024, accessed Jan. 24, 2025, <https://www.sedaily.com/NewsView/2DGZUEVR6C>

¹³ Kim Ki-yoon, *The killer of a Chinese Public Security officer from 30 years ago who had laundered his identity repatriated*, Dong-A Ilbo, May 18, 2022, <https://www.donga.com/news/Society/article/all/20220518/113468246/1>.

effectively guaranteed in practice and ensuring the application of clear and transparent procedures for refugee status determination and related appeals, in line with international standards.

2-3. The National Intelligence Service (NIS)'s formalized role in the Ministry of Justice (MOJ)'s internal review body, the Refugee Committee, with respect to article 16 of the Convention

The Ministry of Justice (MOJ)'s internal review body created under the Refugee Act to hear administrative appeals against the decisions made by the immigration officials, the Refugee Committee [난민위원회], includes the National Intelligence Service (NIS)'s head of counterintelligence corps, in accordance with Article 2(2)(3) of the detailed operational rules for the Refugee Committee (Ordinance of the Ministry of Justice no. 1378, last revised on 25 August 2021).¹⁴ The NIS's risk assessment about the refugee applicant's country of origin plays a decisive role in practice.

The formal role of intelligence officers in the refugee status determination is difficult to rationalize or justify and other government offices, like the Ministry of Foreign Affairs (MOFA), should collect and share information about the countries of origin and publish the country-specific assessment to provide objective guidelines and to strengthen transparency in the refugee determination process. This would better ensure that asylum-seekers are unduly denied a proper review and exposed to the risk of *refoulement*.

3. List of suggested questions

The coauthors suggest that the Committee pose the following questions to the Government:

- What discussions or consultations have authorities had to criminalize enforced disappearance committed by North Korea or other “non-states” in the domestic implementing bills for the Enforced Disappearance Convention?
- What discussions or consultations have authorities had to ban *refoulement* to North Korea or other “non-states” in the domestic implementing bills for the Enforced Disappearance Convention?
- What discussions or consultations have authorities had about eliminating references to the death penalty in the draft domestic implementing bills in the domestic implementing bills for the Enforced Disappearance Convention, consistent with South Korea's obligations under ICCPR Article 6 and its *de facto* abolitionist status?
- What discussions or consultations have authorities had to prevent *refoulement* of North Korean escapees where there are substantial grounds for believing that they would be in danger of being subjected to enforced disappearance?
- What discussions or consultations have authorities had to prevent *refoulement* of foreign

¹⁴ The original Korean version is: 난민위원회 운영세칙 [시행 2021. 8. 25.] [법무부훈령 제 1378호, 2021. 8. 25., 일부개정], <https://www.law.go.kr/admRulLsInfoP.do?chrClsCd=&admRulSeq=2100000257468>

nationals where there are substantial grounds for believing that they would be in danger of being subjected to enforced disappearance?

- What discussions or consultations have authorities had to reform the Ministry of Justice (MOJ)'s internal review body, the Refugee Committee, so that information about the country of origin is provided by the Ministry of Foreign Affairs or other government bodies, rather than the National Intelligence Service (NIS), to reduce the asylum-seekers' *refoulement*?

Annex:

The Two Domestic Implementing Bills for the Enforced Disappearance Convention
Pending in the 22nd National Assembly

<p>Bill for the Act on Punishment of Crime of Enforced Disappearance, Prevention of Enforced Disappearance and Remedies for Victims (bill no. 2201373) proposed by 11 members including Kim Gi-hyeon on 4 July 2024¹⁵</p>	<p>Bill for the Act on Punishment of Crime of Enforced Disappearance, Prevention of Enforced Disappearance and Remedies for Victims (bill no. 2204872) proposed by 11 members including Kim Young-bae on 24 October 2024¹⁶</p>
<p>Article 1 (Purpose) The purpose of this Act is to contribute to the guarantee of human rights and fundamental freedoms and the realization of justice by providing for provisions necessary for the prevention of enforced disappearance, punishment of the crime of enforced disappearance and remedies for the victims of enforced disappearance, etc. in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance and rules of international law, UN resolutions, etc. related to enforced disappearance.</p>	<p>Article 1 (Purpose) The purpose of this Act is to contribute to the guarantee of human rights and fundamental freedoms and the realization of justice by providing for provisions necessary for the prevention of enforced disappearance, punishment of the crime of enforced disappearance and remedies for the victims of enforced disappearance, etc. in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance and rules of international law, UN resolutions, etc. related to enforced disappearance.</p>
<p>Article 2 (Basic Ideas) (1) No one shall be subjected to enforced disappearance. (2) Enforced disappearance cannot be justified in time of war, armed conflict or similar national emergency.</p>	<p>Article 2 (Basic Ideas) (1) No one shall be subjected to enforced disappearance. (2) Enforced disappearance cannot be justified in time of war, armed conflict or similar national emergency.</p>
<p>Article 3 (Definitions) The terms used in this Act shall be defined as follows: 1. The term “enforced disappearance” means any of the following acts committed by a state organ or an individual or a group composed of individuals (with respect to the crime of enforced disappearance, this means a state organ or an individual who belongs to a group and commits the crime of enforced disappearance. Hereinafter, “enforced disappearance actors, etc.”) acting under the authorization, support or</p>	<p>Article 3 (Definitions) The terms used in this Act shall be defined as follows: 1. The term “enforced disappearance” means any of the following acts committed by a state organ (including a local self-governing organizations and a public institution in accordance with article 4 of the Act on the Management of Public Institutions) or an individual or a group composed of individuals (with respect to the crime of enforced disappearance, this means a state organ or an</p>

¹⁵ [2201373] 강제실종범죄 처벌, 강제실종의 방지 및 피해자의 구제 등에 관한 법률안(김기현의원 등 11인), https://likms.assembly.go.kr/bill/bi/billDetailPage.do?billId=PRC_N2O4N0N6L2M8L1S6T4R7S4Q7R0P6X1 [in Korean]

¹⁶ [2204872] 강제실종범죄의 처벌, 강제실종의 방지 및 피해자의 구제 등에 관한 법률안(김영배의원 등 11인), https://likms.assembly.go.kr/bill/bi/billDetailPage.do?billId=PRC_F2E4F0D9D1B9Y1Y3W4X9V3W8U4V8D7 [in Korean]

<p>acquiescence of the state; provided that acts of organs of anti-state organization under article 2 (1) of the National Security Act or acts done under the authorization, support or acquiescence of the anti-state organization are also considered acts of the enforced disappearance actors, etc.</p> <p>(a) The arrest, detention, kidnapping, abduction or deprivation of liberty by other means (hereinafter “deprivation of liberty”) of a person followed by the concealment (including where one refuses to provide information or provides false information) of information concerning the fact of deprivation of liberty or personal information, survival, whereabouts, etc. of the person deprived of liberty;</p> <p>(b) The refusal to provide information or provision of false information by a person who has obligation to provide information prescribed in item (a).</p> <p>2. The term “crime of enforced disappearance” means crimes referred to from Articles 7 to 12;</p> <p>3. The term “victim of crime of enforced disappearance” means a person who was subjected to the crime of enforced disappearance (including a person who died).</p> <p>4. The term “victim of enforced disappearance” means a victim of crime of enforced disappearance and his/her spouse (including a de facto spouse), lineal ascendant and descendant, and brother and sister.</p>	<p>individual belonging to it, an individual or an individual belonging to a group who commits the crime of enforced disappearance. Hereinafter, “enforced disappearance actors, etc.”) acting under the authorization, support or acquiescence of the state.</p> <p>(a) The arrest, detention, kidnapping, abduction or deprivation of liberty by other means (hereinafter “deprivation of liberty”) of a person followed by the denial of the deprivation or liberty and the concealment (including where one refuses to provide information or provides false information) of information concerning the fact of deprivation of liberty or personal information, survival, whereabouts, etc. of the person deprived of liberty.</p> <p>(b) The refusal to provide information or provision of false information by a person who has obligation to provide information prescribed in item (a).</p> <p>2. The term “crime of enforced disappearance” means crimes referred to from Articles 8 to 13;</p> <p>3. The term “forcibly disappeared person” means a person who was subjected to the crime of enforced disappearance (including a person who died).</p> <p>4. The term “victim of crime of enforced disappearance” means a victim of crime of enforced disappearance and his/her spouse (including a person in de facto marital relationship), lineal ascendant and descendant, brother and sister and other individuals who suffered harm as the direct result of crime of enforced disappearance.</p>
	<p>Article 4 (Standards of Interpretation)</p> <p>(1) The interpretation and application of this Act shall be in accordance with the contents and purpose of the International Convention for the Protection of All Persons from Enforced Disappearance and treaties ratified or acceded to by the Republic of Korea, the generally recognized rules of international law and resolutions of international organizations to which the Republic of Korea is a member related to universal human rights issues including enforced disappearance.</p> <p>(2) The interpretation and application of this Act shall respect the interpretation and application related to enforced disappearance by the UN Working Group on Enforced or Involuntary Disappearances (WGEID), the Committee on Enforced Disappearances (CED) and other</p>

	international and regional organizations.
<p>Article 4 (Scope of Application related to Crime of Enforced Disappearance)</p> <p>(1) This Act shall apply to any Korean or foreign national who commits crime of enforced disappearance within the territory of the Republic of Korea.</p> <p>(2) This Act shall apply to any Korean national who commits crime of enforced disappearance outside the territory of the Republic of Korea.</p> <p>(3) This Act shall apply to any foreign national who commits crime of enforced disappearance on board a vessel or aircraft registered in the Republic of Korea, while outside the territory of the Republic of Korea.</p> <p>(4) This Act shall apply to any foreign national who commits crime of enforced disappearance against the Republic of Korea or its nationals outside the territory of the Republic of Korea.</p> <p>(5) This Act shall apply to any foreign national who commits crime of enforced disappearance outside the territory of the Republic of Korea and is in the territory of the Republic of Korea.</p>	<p>Article 5 (Scope of Application related to Crime of Enforced Disappearance)</p> <p>(1) This Act shall apply to any Korean or foreign national who commits crime of enforced disappearance within the territory of the Republic of Korea.</p> <p>(2) This Act shall apply to any Korean national who commits crime of enforced disappearance outside the territory of the Republic of Korea.</p> <p>(3) This Act shall apply to any foreign national who commits crime of enforced disappearance on board a vessel or aircraft registered in the Republic of Korea, while outside the territory of the Republic of Korea.</p> <p>(4) This Act shall apply to any foreign national who commits crime of enforced disappearance against the Republic of Korea or its nationals outside the territory of the Republic of Korea.</p> <p>(5) This Act shall apply to any foreign national who commits crime of enforced disappearance outside the territory of the Republic of Korea and is in the territory of the Republic of Korea.</p>
<p>Article 5 (Relationship to other Acts, etc.)</p> <p>For the crime of enforced disappearance, this Act shall apply in precedence, provided that for the crime of enforced disappearance amounting to crimes against humanity pursuant to the Rome Statute of the International Criminal Court and the Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court, the provisions therein shall govern.</p>	<p>Article 6 (Relationship to other Acts, etc.)</p> <p>For the crime of enforced disappearance, this Act shall apply in precedence, provided that for the crime of enforced disappearance amounting to crimes against humanity pursuant to article 7 of the Rome Statute of the International Criminal Court and article 9 of the Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court, the provisions therein shall govern.</p>
<p>Article 6 (Special Provisions concerning Prescription of Public Prosecution)</p> <p>(1) The crime of enforced disappearance under Article 10 shall not be subject to the prescription for public prosecution provided for in Articles 249 to 253 of the Criminal Procedure Act and Articles 291 to 295 of the Military Court Act.</p> <p>(2) The prescription of public prosecution for the crime of enforced disappearance referred to in the provisions other than Article 10 shall commence from the latest time among the time when the acts referred to in each item of Article 3 (1) end and the time when the survival and whereabouts of victims of crime of enforced disappearance are ascertained, notwithstanding Article 252 (1) of the Criminal Procedure Act and Article 294 (1) of the Military Court Act.</p>	<p>Article 7 (Special Provisions concerning Prescription of Public Prosecution)</p> <p>(1) The crime of enforced disappearance under Article 11 shall not be subject to the prescription for public prosecution provided for in Articles 249 to 253 of the Criminal Procedure Act and Articles 291 to 295 of the Military Court Act.</p> <p>(2) The prescription of public prosecution for the crime of enforced disappearance referred to in the provisions other than Article 11 shall commence from the latest time among the time when the acts referred to in each item of Article 3 (1) end and the time when the survival and whereabouts of victims of crime of enforced disappearance are ascertained, notwithstanding Article 252 (1) of the Criminal Procedure Act and Article 294 (1) of the Military Court Act.</p>
<p>Article 7 (Crime of Enforced Disappearance)</p> <p>(1) An enforced disappearance actor, etc. who commits the crime referred to in Article 3 (1) (a)</p>	<p>Article 8 (Crime of Enforced Disappearance)</p> <p>(1) An enforced disappearance actor, etc. who commits the crime referred to in Article 3 (1) (a)</p>

<p>shall be punished by imprisonment for not less than 2 years and not more than 25 years.</p> <p>(2) An enforced disappearance actor, etc. who commits the crime referred to in Article 3 (1) (b) shall be punished by imprisonment for not less than 1 year and not more than 15 years.</p>	<p>shall be punished by imprisonment for not less than 2 years and not more than 25 years.</p> <p>(2) An enforced disappearance actor, etc. who commits the crime referred to in Article 3 (1) (b) shall be punished by imprisonment for not less than 1 year and not more than 15 years.</p>
<p>Article 8 (Receiving and Harboring of Disappeared Person)</p> <p>A person who receives or harbors a person subjected to enforced disappearance by the crime referred to in Article 7 (1) shall be punished by imprisonment for not more than 15 years.</p>	<p>Article 9 (Receiving and Harboring of Disappeared Person)</p> <p>A person who receives or harbors a person subjected to enforced disappearance by the crime referred to in Article 8 (1) shall be punished by imprisonment for not more than 15 years.</p>
<p>Article 9 (Inflicting or Causing Bodily Injury by Enforced Disappearance)</p> <p>A person who commits the crime referred to in Article 7, thereby inflicting or causing the injury to a person subjected to enforced disappearance shall be punished by imprisonment for not less than 3 years.</p>	<p>Article 10 (Inflicting or Causing Bodily Injury by Enforced Disappearance)</p> <p>A person who commits the crime referred to in Article 8, thereby inflicting or causing the injury to a person subjected to enforced disappearance shall be punished by imprisonment for not less than 3 years.</p>
<p>Article 10 (Killing or Causing Death by Enforced Disappearance)</p> <p>(1) A person who commits the crime referred to in Article 7, thereby killing a person subjected to enforced disappearance shall be punished by death or imprisonment for life or for not less than 7 years.</p> <p>(2) A person who commits the crime referred to in Article 7, thereby causing death of a person subjected to enforced disappearance shall be punished by imprisonment for life or for no less than 5 years.</p>	<p>Article 11 (Killing or Causing Death by Enforced Disappearance)</p> <p>(1) A person who commits the crime referred to in Article 8, thereby killing a person subjected to enforced disappearance shall be punished by death or imprisonment for life or for not less than 7 years.</p> <p>(2) A person who commits the crime referred to in Article 8, thereby causing death of a person subjected to enforced disappearance shall be punished by imprisonment for life or for no less than 5 years.</p>
<p>Article 11 (Attempts)</p> <p>Any attempt to commit the crimes referred to in Articles 7 to 10 shall be punished.</p>	<p>Article 12 (Attempts)</p> <p>Any attempt to commit the crimes referred to in Articles 8 to 11 shall be punished.</p>
<p>Article 12 (Preparations, Conspiracies)</p> <p>An official, etc. who makes preparations or conspires with intent to commit the crimes referred to in Articles 7 to 10 shall be punished.</p>	<p>Article 13 (Preparations, Conspiracies)</p> <p>An official, etc. who makes preparations or conspires with intent to commit the crimes referred to in Articles 8 to 11 shall be punished.</p>
<p>Article 13 (Responsibilities of Superiors, etc.)</p> <p>(1) When a superior (including those actually exercising the power of superiors; hereinafter the same shall apply) of an organization or an institution aware that subordinates under his/her effective command or supervision are committing or intending to commit the crime of enforced disappearance fails to take any of the following measures, not only shall those who commit such crime of enforced disappearance shall be punished, but the superiors thereof shall also be subject to punishment provided for in each of the relevant Articles.</p> <p>1. Necessary and reasonable measures to</p>	<p>Article 14 (Responsibilities of Superiors, etc.)</p> <p>(1) When a superior (including those actually exercising the power of superiors; hereinafter the same shall apply) of an organization or an institution aware that subordinates under his/her effective command or supervision are committing or intending to commit the crime of enforced disappearance fails to take any of the following measures, not only shall those who commit such crime of enforced disappearance shall be punished, but the superiors thereof shall also be subject to punishment provided for in each of the relevant Articles.</p> <p>1. Necessary and reasonable measures to</p>

<p>prevent the crime of enforced disappearance; 2. Notification of cases to the competent authorities for investigation and prosecution of the crime of enforced disappearance (2) When a superior neglects or abandons his/her duties and thereby fails to prevent or repress the commission of the crimes referred to in Article 10 by subordinates under his/her effective command or supervision, he/she shall be punished by imprisonment for not more than 7 years. (2) When a superior neglects or abandons his/her duties and thereby fails to prevent or repress the commission of the crimes referred to in Articles 7 to 9 by subordinates under his/her effective command or supervision, he/she shall be punished by imprisonment for not more than 5 years. (4) The provisions of paragraphs (1) to (3) shall be without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander (including a person effectively exercising the authority of a commander).</p>	<p>prevent the crime of enforced disappearance; 2. Notification of cases to the competent authorities for investigation and prosecution of the crime of enforced disappearance (2) When a superior neglects or abandons his/her duties and thereby fails to prevent or repress the commission of the crimes referred to in Article 11 by subordinates under his/her effective command or supervision, he/she shall be punished by imprisonment for not more than 7 years. (2) When a superior neglects or abandons his/her duties and thereby fails to prevent or repress the commission of the crimes referred to in Articles 8 to 10 by subordinates under his/her effective command or supervision, he/she shall be punished by imprisonment for not more than 5 years. (4) The provisions of paragraphs (1) to (3) shall be without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander (including a person effectively exercising the authority of a commander).</p>
<p>Article 14 (Mitigation of Punishment) (1) If a person who has committed the crimes referred to in Articles 7, 8, 9, 11 or 13 effectively contributes to bringing the disappeared person forward alive, the punishment may be mitigated. (2) If a person who has committed the crimes referred to in Articles 7 to 13 makes it possible to clarify cases of enforced disappearance or to identify the persons who committed the crime of enforced disappearance.</p>	<p>Article 15 (Mitigation of Punishment) (1) If a person who has committed the crimes referred to in Articles 8 to 10, 12 and 14 effectively contributes to bringing the disappeared person forward alive, the punishment may be mitigated. (2) If a person who has committed the crimes referred to in Articles 8 to 14 makes it possible to clarify cases of enforced disappearance or to identify the persons who committed the crime of enforced disappearance.</p>
	<p>Article 16 (Crime of Enforced Disappearance by Non-State Actor) If an individual or an individual belonging to a particular organization that is not an enforced disappearance actor commits the crimes referred to in Article 8 to 14, the punishment may be mitigated.</p>
<p>Article 15 (Prohibition of Forcible Repatriation, etc.) The State shall not expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.</p>	<p>Article 17 (Prohibition of Forcible Repatriation, etc.) The State shall not expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.</p>
<p>Article 16 (Prescription for Claim for Damages) The period of prescription for claims arising from enforced disappearance shall not progress until the latest time among the time when the</p>	<p>Article 18 (Prescription for Claim for Damages) The period of prescription for claims arising from enforced disappearance shall not progress until the latest time among the time when the</p>

acts referred to in each item of Article 3 (1) end and the time when the survival and whereabouts of victims of enforced disappearance are ascertained.	acts referred to in each item of Article 3 (1) end and the time when the survival and whereabouts of victims of enforced disappearance are ascertained.
Article 17 (State Obligation to Provide Remedies) The state shall take appropriate measures of remedies, including rehabilitation, restoration of honor and social reintegration, for victims of enforced disappearance.	Article 19 (State Obligation to Provide Remedies) The state shall take appropriate measures of remedies, including rehabilitation, restoration of honor and social reintegration, for victims of crime of enforced disappearance.
Article 18 (Protection of Children) The state shall consider as top priority the interest of children affected by enforced disappearance and endeavor to protect their rights and interests.	Article 20 (Protection of Children) The state shall consider as top priority the interest of children affected by enforced disappearance and endeavor to protect their rights and interests.
Addenda This Act shall enter into force 6 months after the date of its promulgation.	Addenda This Act shall enter into force 6 months after the date of its promulgation.