



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Report submitted by the Republic of Korea under
article 29 (1) of the Convention, due in 2025*, ****

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* The present document is being issued without formal editing.

** The annexes to the present document may be accessed from the web page of the Committee.



1. The Government of the Republic of Korea (hereinafter, “Government”), as a State Party to the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter, “Convention”), hereby submits its first national report in accordance with Article 29 of the Convention.
2. The Convention was ratified by the plenary session of the National Assembly on 8 December 2022, and after the Government deposited the instrument of accession with the United Nations Secretary General on 4 January 2023, the Convention entered into force on 3 February 2023, 30 days after the deposit.

General Information

Legal Framework for the Prohibition of Enforced Disappearances

General Legal Framework for the Prohibition of Enforced Disappearances

3. Although the Criminal Act does not contain a provision that explicitly penalizes enforced disappearances, acts of enforced disappearance may fall under crimes of unlawful arrest and confinement (Article 124), crimes of false arrest and illegal confinement (Articles 276 through 280), and crimes of death or injury caused by arrest and confinement (Article 281) of the said act, and also fall under the offense of unlawful arrest and confinement resulting in death or injury (Article 4-2) of the Act on the Aggravated Punishment of Specific Crimes. Furthermore, the Act on Punishment of Crimes under Jurisdiction of the International Criminal Court (hereinafter referred to as the “ICCA”) classifies enforced disappearance as one of the crimes against humanity when committed as part of a widespread or systematic attack against civilians.

Participation in Treaties Related to Enforced Disappearances

4. The Government takes part in international legal frameworks that are directly or indirectly related to the prevention of enforced disappearances. In addition to the Convention, key international instruments include the following:

- The International Covenant on Civil and Political Rights (ICCPR) acceded in April 1990;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) acceded in January 1995; and
- The Rome Statute of the International Criminal Court acceded in November 2002; notably, Article 7 paragraph 1 subparagraph I thereof defines “enforced disappearances of persons” as a crime against humanity under the jurisdiction of the International Criminal Court.

5. Furthermore, the Government has actively contributed to international efforts to prevent enforced disappearances by co-sponsoring the “resolution on enforced disappearances” by the United Nations Human Rights Council at its 54th session in 2023,¹ as well as the United Nations General Assembly at its 78th session.²

Status of the Convention in the Domestic Legal Order in Relation to the Constitution and General Laws

6. Pursuant to Article 6 paragraph 1 of the Constitution of the Republic of Korea (hereinafter, “Constitution”), 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 the Republic of Korea.

¹ A/HRC/RES/54/14, Resolution on enforced or involuntary disappearances.

² A/RES/78/207, Resolution on International Convention for the Protection of All Persons from Enforced Disappearance.

Relevant Judicial, Administrative and Other Authorities

7. The Government established the Human Rights Bureau of the Ministry of Justice on 3 May 2006, to oversee national human rights policies and human rights-related affairs, and to conduct investigations and handle complaints regarding human rights violations occurring within the legal administrative affairs, including correction, immigration, crime prevention and prosecution and carry out inspections on the conditions of detention and protection facilities, independently from the relevant divisions, bureaus and departments.

8. Matters concerning the inspection of detention facilities, detention records, and release thereunder are regulated and administratively processed under Article 8 (circuit inspection on correctional facilities), Article 16 (confinement of new inmates), Article 19 (preparation of confinement records, etc.), Article 117 (petitions), Article 123 (release) and Article 124 (timing for release) of the Act on Execution of Sentences and Treatment of Inmates.

Statistical Data on Cases of Enforced Disappearances

9. Statistical data on enforced disappearances cases is not separately managed or maintained.

Acceptance of Notification Procedures

10. The Government recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by State Parties of a violation of the provisions of the Convention, in accordance with Articles 31 and 32 thereof.

Article 1

Non-derogable Prohibition of Enforced Disappearances

Non-Derogability of the Prohibition of Enforced Disappearances and Effective Implementation of Non-Derogable Legal Framework and Practices

11. The constitutional basis for the principle of non-derogability in the prohibition of enforced disappearances is found in provisions related to the right to life, personal liberty and freedom of residence and movement. Although the right to life is not explicitly stipulated in the Constitution, it is recognized as “human dignity and worth” under Article 10 of the Constitution or a “right not enumerated in the Constitution” under Article 37, paragraph 1 of the Constitution. Furthermore, acts of unlawful arrest or confinement are subject to criminal penalties under the Criminal Act, including offenses related to arrest and confinement. Meanwhile, although the Constitution provides for emergency measures concerning fundamental rights, such measures are strictly enforced under limited conditions.³

³ Article 76 (1) In time of internal turmoil, external menace, natural calamity or a grave financial or economic crisis, the President may take in respect to them the minimum necessary financial and economic actions or issue orders having the effect of Act, only when it is required to take urgent measures for the maintenance of national security or public peace and order, and there is no time to await the convocation of the National Assembly.

(2) In case of major hostilities affecting national security, the President may issue orders having the effect of Act, only when it is required to preserve the integrity of the nation, and it is impossible to convene the National Assembly.

(3) In case actions are taken or orders are issued under paragraphs (1) and (2), the President shall promptly notify it to the National Assembly and obtain its approval.

(4) In case no approval is obtained, the actions or orders shall lose effect forthwith. In such case, the Acts which were amended or abolished by the orders in question shall automatically regain their original effect at the moment the orders fail to obtain approval.

(5) The President shall, without delay, put on public notice developments under paragraphs (3) and (4).

Article 2

Definition of Enforced Disappearances

12. In handling enforced disappearances cases, relevant provisions under the Criminal Act, the Act on the Aggravated Punishment of Specific Crimes, and the ICCA serve as the legal basis for criminal punishment, and the punishment provisions of the given legislations apply to acts subject to the definition of enforced disappearance under the Convention.

13. When enforced disappearances are punished as a criminal offense, both the substantive provisions of the Criminal Act and the procedural provisions of the Criminal Procedure Act apply, unless specific exceptions are provided under separate implementing legislation.

14. The same applies to cases involving the military. However, if an enforced disappearance is punished as a criminal offense and the perpetrator falls under the category of military personnel, etc. (as defined in Article 2 of the Military Court Act), the Military Court Act shall apply.

Article 3

Investigation and Accountability for Disappearances Perpetuated without State Involvement

15. Pursuant to the Criminal Procedure Act, the Government has adopted the principle of public prosecution by state, under which a prosecutor or judicial police officer, upon deeming that there is a suspicion of a crime, shall investigate the offender, criminal facts and evidence (Articles 196 and 197), while the prosecutor is responsible for initiating and conducting prosecutions based on the evidence obtained through investigations (Article 246).

Article 4

Criminalization of Enforced Disappearances

16. The Government established and operated the Legislative Committee on the Implementation of the Convention from November 2020 to September 2021 to review domestic criminal laws and regulations to criminalize enforced disappearances, involving experts of domestic criminal law, international criminal law and international human rights law and officials from relevant ministries.

17. Regarding the two legislative bills on the implementation of the Convention that were submitted during the 21st National Assembly, the Government actively participated in the legislative discussions by proposing amendments to the committee, which were adopted as alternative drafts. As of May 2025, two legislative bills titled the Act on the Punishment of Enforced Disappearance Crimes have been submitted to the National Assembly. The Government will continue to actively engage in discussions within the National Assembly regarding the enactment of domestic legislation for the implementation of the Convention.

Article 77 (1) When it is required to cope with a military necessity or to maintain the public safety and order by mobilization of the military forces in time of war, armed conflict or similar national emergency, the President may proclaim martial law under the conditions as prescribed by Act.

(2) Martial law shall be of two types: extraordinary martial law and precautionary martial law.

(3) Under extraordinary martial law, special measures may be taken with respect to the necessity for warrants, freedom of speech, the press, assembly and association, or the powers of the Executive and the Judiciary under the conditions as prescribed by Act.

(4) When the President has proclaimed martial law, he shall notify it to the National Assembly without delay.

(5) When the National Assembly requests the lifting of martial law with the concurrent vote of a majority of the total members of the National Assembly, the President shall comply.

Article 5

Crimes against Humanity

Definition of Enforced Disappearance as a Crime against Humanity

18. The definition of enforced disappearance as a crime against humanity is stipulated in Article 9, Paragraph 2 of the ICCA,⁴ and additionally, when non-state groups are involved in the commission of enforced disappearance crimes, such acts may also fall under Article 114 of the *Criminal Act*, which penalizes the organization of criminal groups.

Sentencing and Statute of Limitations for Enforced Disappearances as a Crime against Humanity

19. Pursuant to Article 9 paragraph 2 subparagraph 8 of the ICCA, the prescribed punishment for enforced disappearances as a crime against humanity is “imprisonment for life or for not less than five years,” and additionally, under Article 6 (Non-Applicability of Statute of Limitations) thereof, the statute of limitations does not apply to such offenses.

20. Under the Criminal Procedure Act, the statute of limitations applies as follows: 25 years for crimes punishable by death, 15 years for crimes punishable by life imprisonment, 10 years for crimes punishable by imprisonment of 10 years or more, and 7 years for crimes punishable by imprisonment of less than 10 years (Article 249). Additionally, in 2015, the Criminal Procedure Act was amended to exclude the application of the statute of limitations to crimes punishable by death as “crimes of killing a person” (Article 253-2).

Article 6

Criminal Liability

Criminal Liability Based on Forms of Involvement in a Crime

21. The Criminal Act of the ROK, while primarily providing for the punishment of principal offenders, separately stipulates the criminal liability of co-principals, instigators, accessories, and principals through innocent human agents under Section 3 (complicity). Accordingly, in the criminal prosecution of enforced disappearances, when two or more persons have jointly committed a crime, each of them shall be punished as a principal offender for the crime committed (Article 30 (co-principals) of the Criminal Act); for a person who instigates another to commit a crime, the same punishment shall be applied to the instigator as one who actually commits the crime (Article 31 (instigator) of the Criminal Act); those who aid and abet the commission of a crime by another person shall be punished as accessories, which shall be mitigated to less than that of the principals (Article 33 (accessories) of the Criminal Act); and a person who commits a crime by instigating or aiding and abetting another who is not punishable for such conduct shall be punishable in accordance with the provision for an instigator or accessory (Article 34 (principal through innocent human agent) of the Criminal Act).

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

8. Committing any of the following acts with the authorization, support or acquiescence of the State or a political organization, with the intention of removing a person from the protection of the law for a prolonged period of time:

(a) Arresting, detaining, abducting or kidnapping (hereinafter referred to as “arrest, etc.”) a person and refusing to give information or providing incorrect information on the fact regarding the arrest, etc., identity, the fate, whereabouts, etc. of such person;

(b) Refusal by a person who is obliged to give information stated in item (a) to give such information or the provision of incorrect information;

Prohibition of Invoking Superior's Orders

22. There is a duty to obey a superior's legitimate orders. In this regard, Article 44 of the Military Criminal Act provides punishment for a person who resists or disobeys a legitimate order of his or her superior. However, there is no obligation to comply with an unlawful order from a superior, and if one follows such an unlawful order, it is difficult to justify the act under Article 20 (justifiable act) or Article 22 (necessity) of the Criminal Act. The Supreme Court precedents also affirm this principle, ruling that a legitimate order in the context of disobedience offenses presupposes the legality of the order (see Supreme Court decision 63Do225, etc.). Meanwhile, Article 4 of the ICCA⁵ stipulates that "he/she shall not be punished if the order is not manifestly unlawful and he/she has a justifiable reason for not knowing that such order is unlawful."

Punishment for a Superior's Failure to Take Appropriate Action

23. A superior who fails to respond appropriately despite knowing of a subordinate's enforced disappearances crime, whether by ignoring it or failing to take reasonable action, may be subject to punishment under the Criminal Act as a co-principal (Article 30), instigator (Article 31), accessory (Article 32), or principal through an innocent human agent (Article 34), as well as for crimes committed through omission (Article 18). Specifically, under Article 6, paragraph 1, subparagraph (b), item (i) of the Convention, in the case of "knowing, or consciously disregarding information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance," the superior has a duty to prevent the crime of enforced disappearances of the subordinate, and accordingly, under the Criminal Act, the superior may be punished as a crime of omission in relation to unlawful arrest and confinement. Under Article 6, paragraph 1, subparagraph (b), item (ii) of the Convention, in the case of "exercising effective responsibility for and control over activities which were concerned with the crime of enforced disappearance," the superior can be recognized as having a guarantor duty, and thus may also be punished as a crime of omission as above. Under Article 6, paragraph 1, subparagraph (b), item (iii) of the Convention, in the case of "failing to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution," the superior may be punished under the Criminal Act depending on the circumstances, either as an accomplice in unlawful arrest or confinement or for neglect of duty (Article 122).

24. If a commander fails to fulfill their duties without justifiable reason, Chapter IV of the Military Criminal Act stipulates crimes of surrender and escape of commanders. Specifically, for a commander unjustifiably refusing or abandoning their duties, Article 24 of the Military Criminal Act stipulates the crime of neglect of duty as a special offense to the crime of neglect of duty under Article 122 of the Criminal Act. Additionally, Article 5 of the ICCA provides for the responsibilities of commanders and other superiors, stating that "when a military commander (including those actually exercising the power of military commanders; hereinafter the same shall apply) or a superior (including those actually exercising the power of superiors; hereinafter the same shall apply) of an organization or an institution aware that subordinates under his/her effective command and control are committing or intending to commit the crime of genocide, etc. fails to take any necessary and reasonable measures to prevent them from doing so, not only shall those who commit such crime of genocide, etc. shall be punished, but the commanders or superiors thereof shall also be subject to punishment provided for in each of the relevant Articles."

⁵ Article 4 (acts done pursuant to superior's orders)

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

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

Permission of Subordinate's Disobedience to Orders

25. In accordance with Article 56 (duty of fidelity)⁶ of the State Public Officials Act, every public official shall adhere to legislations, and faithfully perform his or her duties, and pursuant to Article 57 (duty of obedience)⁷ thereof, every public official shall obey each order of his or her superior officer with respect to his or her duties. Specifically, for a subordinate disobeying an order, the Supreme Court of the ROK has consistently ruled that a superior has no authority to order a subordinate to commit an unlawful act, including a criminal act, and that if a superior's order is manifestly unlawful or illegal, it cannot be considered an official directive, thereby exempting the subordinate from the obligation to comply:⁸

“A public official, in the performance of duties, has no obligation to comply with an order from a superior that is manifestly unlawful or illegal, as a superior has no authority to command a subordinate to commit an unlawful act, including a criminal act. While a subordinate is obligated to obey a superior's lawful orders, an order that is clearly unlawful or illegal cannot be considered an official directive and does not impose a duty of compliance”.

Impact of the Concept of Due Obedience

26. Article 44 of the Military Criminal Act stipulates punishment for a person who resists or disobeys a legitimate order of his or her superior. Therefore, there is no duty to comply with an unlawful order from a superior, and in cases of insubordination, a legitimate order presupposes a lawful order. The Supreme Court has also ruled in the same manner (see Supreme Court Decision 63Do225, etc.). The relevant provisions regarding legitimate orders are as follows.

27. In accordance with Article 39 (proposal of opinion) of the Framework Act on Military Status and Service, where a soldier has legitimate opinions concerning soldiers' military service, he or she may solely propose such opinions to his or her superior officer, based on the chain of command, and the soldier shall not be given any disadvantageous disposition or treatment for the reason that the person proposed such opinions.

Article 7

Appropriate Penalties

Criminal Sanctions and Disciplinary Measures

28. Regarding Article 7, under the Criminal Act, the seriousness of the offense can be reflected in sentencing through crimes such as unlawful arrest and confinement by a public official (Article 124), false arrest and confinement (Articles 276 through 280), death or injury caused by arrest and confinement (Article 281) and receiving and harboring of a person kidnapped, induced, bought and sold, or transported (Article 292). If a public official commits any of these offenses by abusing their authority, except for the crimes (of unlawful arrest and confinement by a public official) as stipulated under Chapter VII (crimes concerning the duties of public officials) of the Criminal Act, the public official shall be punished by increasing one half of the penalty specified for the crime committed (Article 135 of the Criminal Act). A person who receives or harbors a kidnapped, induced, trafficked, or transported individual shall be punished by imprisonment of up to seven years. A person who arrests or confines another and inflicts cruel treatment shall be punished by imprisonment of up to seven years, and if the offense is committed by a group, with the display of force by a crowd, or while carrying a dangerous object, the penalty may be increased by up to one-half, resulting in imprisonment of up to ten years and six months. If a public official commits

⁶ Article 56 (duty of fidelity) Every public official shall observe statutes or regulations, and faithfully perform his or her duties.

⁷ Article 57 (duty of obedience) Every public official shall obey each order of his or her superior officer with respect to his or her duties.

⁸ Supreme court decision 99Do636 rendered Apr. 23, 1999, supreme court decision 2011Do5329 rendered Nov. 28, 2013, grand bench of the supreme court decision 96Do3376 rendered Apr. 17, 1997, supreme court decision 87Do2358 rendered Feb. 23, 1988.

unlawful arrest or confinement resulting in death, the offense falls under Article 4-2 (unlawful arrest and confinement resulting in death or injury) of the Act on the Aggravated Punishment of Specific Crimes, which prescribes punishment of life imprisonment or imprisonment of at least three years.

29. Meanwhile, under Article 33 (grounds for disqualification) and Article 69 (ipso facto retirement) of the State Public Officials Act, individuals who meet the statutory disqualification criteria cannot be appointed as public officials, and those already serving as public officials shall be subject to ipso facto retirement. For example, a person who has been sentenced to imprisonment without labor or a heavier punishment and five years have not passed since the completion of the sentence (including cases deemed as completed) or the exemption from execution cannot be appointed as a public official, and any public official falling under this category shall retire ipso facto.

30. Furthermore, in accordance with Article 78 (grounds for disciplinary action) of the State Public Officials Act, (1) where a public official violates this Act or any order issued under this Act; (2) where he or she violates obligations on duties (including those imposed on him or her by other statutes or regulations due to his or her status as a public official), or he or she neglects his or her duties; or (3) where he or she commits a conduct detrimental to his or her prestige or dignity, regardless of a connection with his or her duties, a resolution on disciplinary action shall be requested, and a disciplinary disposition shall be taken according to the result of such disciplinary resolution.

Maximum Sentences, Mitigation, and Aggravation under Criminal Law

31. Under the current Criminal Act, if there are extenuating circumstances before or after the crime, discretionary mitigation may be applied when determining the sentence, and general provisions exist regarding special cases of self-denunciation and voluntary confession (Articles 52 and 53 of the Criminal Act).

32. Additionally, since enforced disappearances can be committed in a complex manner, they may constitute multiple offenses, leading to sentence aggravation for concurrent crimes accordingly. When concurrent crimes are adjudicated at the same time, in the event the punishment specified for the most severe crime is death penalty or imprisonment with labor for an indefinite term or imprisonment without labor for an indefinite term, the punishment provided for the most severe crime shall be imposed (Article 38 paragraph 1 subparagraph 1 of the Criminal Act). Additionally, in the event the punishments specified for each crime are of the same kind, other than death penalty or imprisonment with or without labor for an indefinite term, the maximum term or maximum amount for the most severe crime shall be increased by one half thereof (Article 38, paragraph 1, subparagraph 2 of the Criminal Act); in the event the punishments specified for each crime are of different kind other than imprisonment with or without labor for an indefinite term, they shall be imposed concurrently (Article 38, paragraph 1, subparagraph 3 of the Criminal Act). Several crimes for which judgment has not become final, or a crime for which judgment to punish with an imprisonment without labor or a heavier punishment has become final and the crimes committed before the given final judgment shall be regarded as concurrent crimes (Article 37 of the Criminal Act).

Article 8

Statute of Limitations

Application of the Statute of Limitations to Enforced Disappearances

33. Under the Criminal Procedure Act, the statute of limitations is 25 years for crimes punishable by the death penalty, 15 years for crimes punishable by imprisonment with labor for an indefinite term, 10 years for crimes punishable by imprisonment with or without labor for a maximum term of not less than 10 years, and 7 years for crimes punishable by imprisonment with or without labor for a maximum term of less than 10 years (Article 249). Accordingly, under the Criminal Act, the statute of limitations is 7 years for unlawful arrest and confinement by a public official (Article 124) and arrest and confinement (Article 276.) The statute of limitations is 10 years for special false arrest or illegal confinement

(Article 278) and death or injury caused by arrest and confinement (Article 281.) The statute of limitations is 15 years for unlawful arrest and confinement resulting in death or injury under Article 4-2 of the Act on the Aggravated Punishment of Specific Crimes. The ICCA imposes life imprisonment or at least five years for crimes against humanity. Under Article 6 of the ICCA, the statute of limitations does not apply, allowing for proper prosecution of state-led crimes.

Imprescriptive Nature of the Statute of Limitations to Crimes Against Humanity

34. The Criminal Procedure Act excludes the application of the statute of limitations to a “crime of killing a person” as a crime punishable by death (Article 253-2).

Measures to Ensure that the Commencement of Enforced Disappearances Does Not Serve as a Reference to Apply the Statute of Limitations

35. Under the Criminal Procedure Act, the statute of limitations shall commence to run after the criminal act is completed, and in the case of a continuing offense, the statute of limitations does not begin while the infringement of legal interests continues (Article 252, paragraph 1). Additionally, to ensure uniform and fair punishment of accomplices, a special provision states that the limitation period against all accomplices shall commence to run at the time when the criminal action has finally ceased (Article 252, paragraph 2).

Ensuring the Non-Applicability of the Statute of Limitations in Court Actions Brought by Victims Seeking the Right to an Effective Remedy

36. Under the Criminal Procedure Act, special provisions have been established to ensure that the limitation period shall cease to toll on the institution of the public prosecution (Article 253 paragraph 1); once an application for adjudication is filed, the running of prescriptive period for public prosecution shall be interrupted until the ruling on adjudication becomes final and conclusive (Article 262-4 paragraph 1); the limitation period shall be suspended during the period, for which an offender stays abroad for the purpose of escaping criminal punishment (Article 253 paragraph 3); when a public prosecution is instituted against one of several accomplices referred to in the preceding paragraph, the tolling of the limitation period shall be suspended as to the other accomplices and shall begin to toll again when a judgment on the case concerned becomes finally binding (Article 253 paragraph 2).

37. Under the current law, in civil lawsuits for state compensation or damages related to enforced disappearances, the victim’s right to claim damages is governed by the general provisions on tort liability (Article 750 of the Civil Act,) wherein the victim or their legal representative must exercise this right within three years from the date they became aware of the damage and the perpetrator, or within ten years from the date the tort was committed (Article 766 paragraphs 1 and 2). If an unlawful act is continuously committed, resulting in ongoing damage, and unless special circumstances exist, such damage is considered to arise from a new unlawful act each day, and thus, the extinctive prescriptions for claims based on tort liability shall run separately for each occurrence of damage (Supreme Court decision 98Da30285 rendered 23 March 1999). Accordingly, in cases of continuing unlawful acts such as enforced disappearances, the resulting damage is considered to arise from new unlawful acts each day, meaning that the extinctive prescriptions shall also run separately for each occurrence.

Effective Remedies Regarding the Statute of Limitations

38. Under the Criminal Procedure Act, a complainant or an accuser (in cases of abuse of authority, unlawful arrest, illegal confinement, assault, or cruel acts under the Criminal Act) may file a request for adjudication with the competent High Court to review the validity of a prosecutor’s decision not to prosecute (Article 260 paragraph 1). Additionally, once a request for adjudication is filed, the statute of limitations is suspended until the adjudication decision becomes final (Article 262-4 paragraph 1), providing an effective remedy for victims.

Article 9

Exercise of Jurisdiction

39. Under the jurisdictional provisions stipulated in the Criminal Act, the law shall apply to both Korean nationals and aliens who commit crimes in the territory of the ROK (Articles 2 and 3 of the Criminal Act) and shall apply to aliens who commit crimes on board a Korean vessel or Korean aircraft outside the territory of the ROK (Article 4 of the Criminal Act). Also, the Criminal Act shall apply to foreigners who commit crimes outside the territory of the ROK, only when the crimes are concerning insurrection; foreign aggression; the national flag; currency; securities, postage, and revenue stamps; some crimes concerning documents (counterfeit or alteration of official document, drafting of official document by assuming false capacity, preparation of false public document, falsification or alteration of public electromagnetic records, untrue entry in officially authenticated original deed, uttering of falsified public document, unlawful uttering of official document), and seals (counterfeit or misappropriation of official seal) (Article 5 of the Criminal Act). The Criminal Act shall apply to foreigners who commit crimes, other than those specified in Article 5, against the ROK or her nationals outside the territory of the Republic of Korea, provided, however, that this shall not apply where such acts under Act in effect at the time of the act do not constitute a crime, or the prosecution thereof or the execution of the punishment therefor is remitted (Article 6 of the Criminal Act).

40. In cases where enforced disappearances are linked to kidnapping, abduction, or human trafficking, extraterritorial jurisdiction is applicable under Article 296-2 of the Criminal Act, and for enforced disappearances as crimes against humanity, extraterritorial jurisdiction is also applicable under Article 3 of the ICCA, which states that “this Act shall apply to any foreigner who commits the crime of genocide, etc. outside the territory of the Republic of Korea and resides in the territory of the Republic of Korea.”

Article 10

Securing Custody and Preliminary Investigation

Legal Provisions on Detention and Securing Custody of a Suspect

41. In accordance with the Criminal Procedure Act, when a prosecutor deems that there is substantial suspicion of a crime, a lack of a fixed residence, a risk of evidence destruction, or a risk of escape, they may request a warrant of detention from a judge, and the judge shall issue the warrant if deemed appropriate (Articles 201 and 70). Additionally, a criminal suspect who is detained, his/her defense counsel, legal representative, spouse, lineal relative, sibling, family member, cohabitant, or employer may request the competent court to review the legality of the detention, and the court shall order the release of the detained suspect by its ruling if it is deemed that there is a valid ground for the request (Article 214-2), and a criminal defendant under detention, his/her defense counsel, legal representative, spouse, lineal relative, sibling, family member, cohabitant, or employer may file a motion for release of the criminal defendant on bail with the competent court, and unless the defendant is charged with a crime punishable by death, life imprisonment, or imprisonment for a minimum term of 10 years, or other exceptional circumstances apply, the court may grant bail if reasonable grounds exist (Articles 95 and 96).

42. As for additional measures for securing custody, under the Criminal Procedure Act, when a suspect is released through a review of detention legality, conditions such as residence restrictions may be imposed (Article 214-2, paragraph 6), and when bail is granted, the Criminal Procedure Act states that “the criminal defendant shall accept measures taken by the court to prevent him/her from escaping by circumscribing his/her dwelling to a place designated by the court or to require him/her to obtain permission from the court if it is necessary to change such dwelling” (Article 98, subparagraph 3).

43. Regarding extradition-related detention and custody, under Article 19 (issuance of extradition arrest warrant) of the Extradition Act, if the offender does not have a fixed residence or is at risk of flight, a prosecutor may request an extradition arrest warrant, which is issued by a judge. Additionally, under Article 23, paragraph 1 (suspension of execution

and loss of effect of extradition detention), procedures are in place to secure custody by placing the fugitive under the care of a relative, a protective organization, or another appropriate entity instead of detention, or by imposing residence restrictions on the criminal.

Procedures for Ensuring Consular Assistance for Foreign Suspects

44. Foreign nationals are guaranteed the right to receive consular assistance under Article 36 (communication and contact with nationals of the sending state) of the Vienna Convention on Consular Relations, which the Government has ratified and acceded to.

Article 11

Prosecution and Investigation

Legal Framework for Exercising Universal Jurisdiction over Enforced Disappearances

45. Article 9, paragraph 2, subparagraph 8 of the ICCA defines enforced disappearances as a crime against humanity, and Article 3, paragraph 5 thereof stipulates that “this Act shall apply to any foreigner who commits the crime of genocide, etc. outside the territory of the Republic of Korea and resides in the territory of the Republic of Korea”, thereby enabling the exercise of universal jurisdiction.

Relevant Authorities for Prosecution, Including Extradition

46. Under Article 246 (principle of public prosecution by state) of the Criminal Procedure Act, a prosecutor may file charges for crimes related to enforced disappearances. When an indictment is filed, the court shall adjudicate cases based on statutory sentencing guidelines under Article 32 of the Court Organization Act. If the offense carries the death penalty, life imprisonment, or imprisonment for a minimum term of one year, the case is heard by a panel of judges at the district court or its branch court. In other cases, the court may determine that the case should be heard by a panel of judges, depending on the nature of the offense.

Authorities (including the military) with Investigation and Prosecution Powers over Enforced Disappearances

47. Jurisdiction over the prosecution and trial of crimes related to enforced disappearances is specifically defined under Chapter I (jurisdiction of courts) of the Criminal Procedure Act. If the offender is military personnel or falls under the scope of the Military Court Act, jurisdiction is separately stipulated under Article 12-4 (jurisdiction of military courts) and subsequent provisions thereof.

Ensuring the Application of Equal Standards of Proof

48. In all criminal trials, Article 307 (no evidence no trial principle) of the Criminal Procedure Act stipulates that fact finding shall be based on evidence, and criminal facts shall be proved to the extent that there is no reasonable doubt. Additionally, under Article 308 of the Criminal Procedure Act, the probative value of evidence shall be left to the discretion of judges. The Military Court Act also upholds the same evidentiary standards through Article 359 (law of evidence) and Article 360 (principle of free evaluation of evidence), thereby ensuring that the same standards of proof are applied.

Measures to Ensure the Right to a Fair Trial

49. In accordance with Article 27 of the Constitution, all citizens shall have the right to have a trial in accordance to the Act by judges qualified under the Constitution and relevant laws, the right to a speedy trial, the right to a public trial and the right to be presumed innocent until proven guilty are guaranteed. The Criminal Procedure Act and other legal provisions further specify these rights in detail.

50. The right to a fair trial guaranteed under the Constitution is also upheld through specific provisions in the Criminal Procedure Act and the Military Court Act, including such as Article 275-2 (presumption of innocence) of the Criminal Procedure Act, Article 21

(independence of military judicial officers), Article 67 (opening judgment to public) and Article 323 (presumed innocence of defendant) of the Military Court Act.

51. The constitutional right to a fair trial applies equally to both citizens and foreign nationals, ensuring that foreigners are not subject to any discrimination or unfair treatment in judicial proceedings.

Article 12

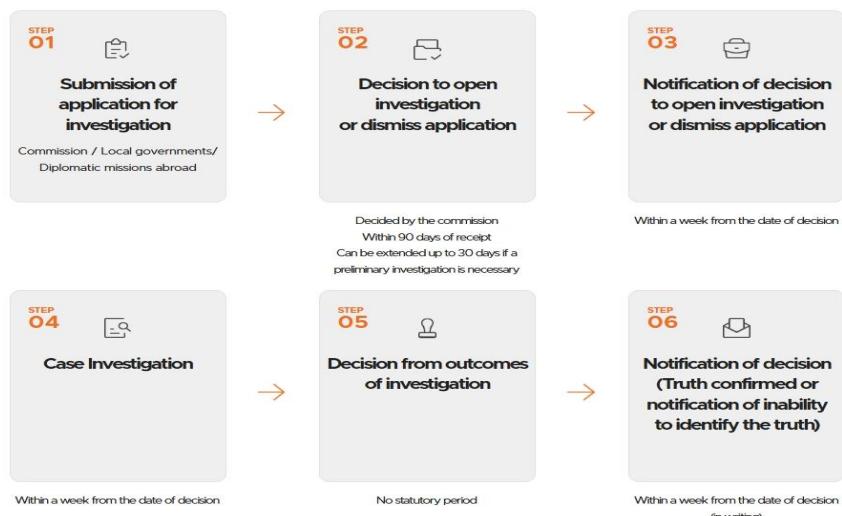
Investigation of Complaints and Accusations

Procedures and Mechanisms Fact-Finding of Enforced Disappearances

52. The Truth and Reconciliation Commission (hereinafter, “TRC”) is an independent state institution established on 10 December 2020, following the amendment to the Framework Act on Settling the Past for Truth and Reconciliation (hereinafter, “PSA”). The TRC independently conducts fact-finding investigations including case selection, decision-making on investigation initiation, investigation proceedings, and determinations on fact-finding within the scope of Article 2 of the PSA and Article 3 of the Act on the March 15 Democratic Uprising. In addition, the TRC conducts research for reconciliation and other tasks deemed necessary (For the detailed fact-finding procedure, see Table-3 below.) Since the TRC is not an investigative authority with the power to file complaints or accusations, its operations are based on applications submitted by victims. However, the TRC is a temporary institution with a legally defined the period of operation from 10 December 2020 to 26 November 2025, which remains a structural limitation.

Table 3

Fact-Finding Procedures by the TRC



53. As an example of the activities of the TRC, in cases of suspicious deaths, although extensive investigations were conducted by the former Committees on Suspicious Deaths, the First TRC, the Ministry of National Defense Past Affairs Committee, and the Democratization Movement Compensation Deliberation Committee, significant difficulties remain in securing decisive evidence and testimonies regarding the circumstances of each death. To address this, the TRC is making every effort to obtain records and substantive testimonies from relevant agencies, including the Defense Counterintelligence Command, the National Intelligence Service and the National Police Agency, to uncover the truth, and as of now, among 24 suspicious death cases received, the TRC has completed the review of five cases (two fact-finding determinations and three dismissals on procedural grounds without full investigation.)

Mechanism for Filing Complaints and Accusations on Enforced Disappearances

54. Victims of enforced disappearance crimes may directly file a criminal complaint to investigative authorities under Article 223 (persons entitled to file criminal complaint) of the Criminal Procedure Act, and even if a person is not a victim, a legal representative of the victim may file a criminal complaint independently, and on the death of the victim, his/her spouse or any of his/her lineal relatives or siblings may file a criminal complaint under Article 225 (complainants who are not victims) thereof. When a victim files a complaint or a third party files an accusation, investigative authorities are obligated to initiate an investigation under Articles 237, 238 and 257 thereof.

55. Under Article 236 (criminal complaints by proxy) of the Criminal Procedure Act, a representative of the victim of enforced disappearance may also file a complaint to investigative authorities, and under Article 234 (accusation) thereof, any person who believes that an offense has been committed may lodge an accusation, even if they are not the victim or an authorized complainant. Under Article 196 (investigation by prosecutor) and Article 197 (judicial police officers) of the Criminal Procedure Act, prosecutors and judicial police officers may conduct an investigation if they determine there is reasonable suspicion of a crime, regardless of whether a complaint or accusation has been filed.

Ensuring Access to Authorities for Complainants and Accusers and Preventing Harassment of Victims

56. The Crime Victim Protection Act, which serves as the general law for the protection and support of victims of crimes, defines a crime victim as (1) a victim of another person's criminal act and the spouse (including the de facto marital relationship), lineal relatives, and siblings of such victim and (2) a person who has suffered harm while engaging in activities to prevent crimes or assist crime victims, and this broad definition includes victims of enforced disappearances as required by the Convention. The Crime Victim Protection Act also establishes the obligation of the state to take appropriate measures to protect all crime victims, including those affected by enforced disappearances, from retaliation, unfair treatment or threats resulting from statements or testimonies provided during criminal proceedings.

57. Meanwhile, if the crime falls under a specific violent crime (Article 2, paragraph 1 of the Act on Special Cases Concerning the Punishment of Specific Violent Crimes, under Article 7 (measures for safety of witness), where it is deemed that the accused or any other person of a specific violent crime harms, or is feared to harm, the life or body of a witness to such specific violent crime, a public prosecutor, ex officio or upon the request of a witness or the presiding judge, shall request the chief of the competent police station to take necessary measures to ensure the safety of the witness. Upon receiving such a request, the police shall promptly take necessary measures to protect the witness and shall notify the public prosecutor thereof.

58. Meanwhile, under Article 8 thereof, with respect to the victims of specific violent crimes, which are under investigation or trial, or persons who have reported cases of specific violent crimes under investigation or trial, their information or photographs which may have the public presumably identify them with the victims or persons who have reported the cases by name, age, address, occupation, appearance, etc. shall not be published in newspapers or other publications, nor broadcast by a broadcast signal or cable. However, provided that this shall not apply where the victims or persons who have reported such cases, or their agents (their spouses, lineal relatives or brothers and sisters in cases where the victims or persons who have reported such cases deceased) who have specifically consented to such publication or broadcasting.

Remedies for Complainants and Accusers in Cases of Investigation Refusal

59. As the Criminal Procedure Act states that when a senior judicial police officer receives a criminal complaint or accusation, he/she shall investigate the relevant documents and evidential materials pertaining thereto promptly and transfer them to a prosecutor (Article 238), and where there is a suspicion that an offense has been committed, a prosecutor or a judicial police officer shall investigate the offender, the facts of the offense, and the evidence

(Articles 196 and 197), If ‘a public official refuses to perform his or her duties or abandons his or her duties without justifiable reason,’ such an act may constitute abandonment of duties (Article 122 of the Criminal Act).

60. Since the ICCA is included in the list of statutes subject to public interest violations under Article 2, subparagraph 1 of the Public Interest Whistleblower Protection Act, cases of enforced disappearances as crimes against humanity may qualify for protection and support under the Public Interest Whistleblower Protection Act. Under Article 10 thereof, an investigative agency that receives a public interest report is obligated to conduct the necessary investigation or inquiry regarding the reported matter. However, as the Public Interest Whistleblower Protection Act does not specify detailed procedures for refusal to investigate, such cases may be handled in accordance with the ICCA as an individual law.

Protection Mechanism for Complainants, Accusers, Representatives and Witnesses

61. The ROK has implemented protective measures under the Act on Protection of Specific Crime Informants and the Public Interest Whistleblower Protection Act to safeguard complainants, accusers, representatives and witnesses from threats to life and physical safety or retaliatory actions due to crime reporting, specifying prohibitions against unfair treatment, omission of personal details in reports and investigation records, restrictions on the disclosure of informant identities, special provisions for witness summoning and interrogation, and personal safety measures. In particular, regarding reports of enforced disappearances, protection measures⁹ extend not only to the families of missing persons but also to accusers, defense counsels, and witnesses involved in crime reporting and investigations to ensure the safety of their lives and physical well-being from threats or retaliation related to crime reporting.

Statistical Data on the Number of Complaints and Accusations of Enforced Disappearances and Results of the Investigations

62. As statistical data on cases of enforced disappearances is not separately managed or stored, compiling statistics on the number of complaints and accusations filed, as well as investigation results is unavailable.

Investigative Authorities on Enforced Disappearances

63. The Government does not have a dedicated investigative unit exclusively responsible for crimes of enforced disappearance such as abduction, but instead, enforced disappearances are processed as general criminal cases. Under Article 196 (investigation by prosecutor) and Article 197 (judicial police officers) of the Criminal Procedure Act, prosecutors and judicial police officers initiate and conduct investigations whenever they recognize reasonable suspicion of a crime, including identifying suspects, criminal facts, and evidence, and for enforced disappearance crimes involving military personnel, military prosecutors and military judicial police officers conduct investigations under Article 228 (investigation by military prosecutors and military judicial police officers) of the Military Court Act, when they recognize reasonable suspicion of a crime, investigating suspects, criminal facts, and evidence accordingly.

Restrictions on Access to Places of Detention

64. Prosecutors or judicial police officers investigating enforced disappearances cases may conduct searches of locations where a missing person is reasonably believed to be present upon obtaining a warrant issued by a judge. (Article 215 of the Criminal Procedure Act) Additionally, if there is an urgent need to search a place of confinement and obtaining a judicial warrant is not possible, a search may be conducted without a warrant. However, in

⁹ For victims of crime, whistleblowers, witnesses, informants, and their family members who are deemed to be at risk of retaliation in connection with reporting a crime, etc., a risk assessment is conducted based on the circumstances of the incident and the potential harm. Based on this assessment, a set of 11 protective measures, including pre-registration in the 112 system, are utilized to ensure the protection of the individuals concerned.

such cases, a warrant must be obtained without delay after the search (Article 216 of the Criminal Procedure Act).

65. If a suspect is arrested or detained, authorities must notify the suspect's defense counsel, spouse, or other relevant individuals of the time and place of the arrest and the essential details of the alleged crime under Articles 87 and 213-2 of the Criminal Procedure Act. Furthermore, when a suspect is deprived of liberty due to arrest or detention, all details including the time and place of arrest, location of detention and transfer records are documented in official investigation forms as stipulated in the Police Investigation Rules. These records are also electronically stored and managed in the Criminal Justice Information System, ensuring full transparency of all detention-related matters. Detainees held in detention centers are guaranteed visitation rights not only with their defense counsel but also with visitors apart from defense counsels such as family members, friends.

Measures for Removing a Suspect from Position

66. Under Article 73-3 (release from position) of the State Public Officials Act¹⁰, a public official may not be granted a position if they are under a pending resolution for severe disciplinary action (equivalent to dismissal, removal, demotion or suspension) or prosecuted in a criminal case (except when subject to a summary order request.). Additionally, a public official under investigation by the Board of Audit and Inspection, the prosecution or the police for serious misconduct, including bribery and sexual offenses as defined by Presidential Decree¹¹, may also be excluded from their position if the severity of the misconduct makes it significantly difficult to expect normal performance of duties. Here, the misconduct specified by Presidential Decree includes acts that severely damage the dignity of a public official, making it inappropriate for them to maintain their position.

Article 13

Extradition of Criminals

Domestic Legislation Recognizing Enforced Disappearances as an Extraditable Offense

67. Under Article 9, paragraph 2, subparagraph 8 of the ICCA, enforced disappearances as a crime against humanity carries a statutory penalty of "life imprisonment or at least five years of imprisonment." According to Article 6 of the Extradition Act, extradition is permitted if the offense is punishable by death, life imprisonment or imprisonment for a minimum term of one year, thus, enforced disappearance crimes qualify as extraditable

¹⁰ Article 73-3 (Release from Position) (1) The appointing authority may choose not to assign a position to any of the following persons:

2. (omitted);
3. A person against whom a resolution of disciplinary action equivalent to removal, release, degradation, or suspension from office is pending;
4. A person who is prosecuted for a criminal case (excluding those against whom a summary order is requested);
5. A member in general service of the Senior Executive Service and is required to undergo an examination of qualifications on the grounds provided in any of Article 70-2, paragraph 1, subparagraphs 2 through 5;
6. A person who is under inspection or criminal investigation by the Board of Audit and Inspection, prosecution, police, or any other investigative agency on a charge of bribery, sex offense, or other malfeasance prescribed by Presidential Decree, which is so serious as to prevent him or her from performing his or her duties normally.

¹¹ Article 60 (Irregularities Subject to Removal from Office) "Irregularities prescribed by Presidential Decree, such as financial corruption and sex crimes" in Article 73-3, paragraph 1, subparagraph 6 of the Act means any of the following:

1. through 3. (omitted)
4. Acts which seriously compromise the dignity of a person as a public official, making him or her no longer fit for the position.

offenses. Furthermore, even in the absence of a extradition treaty between two countries, extradition may still be granted under Article 4 (reciprocity) of the Extradition Act, which states “this Act shall apply even in the absence of an extradition treaty if the Requesting State assures that it will grant extradition for offenses of the same or similar kind as those for which it requests extradition.”

Extradition Treaties Including Enforced Disappearances as an Extraditable Offense

68. Under Article 2 of the Extradition Treaty between the Government of the Republic of Korea and the Government of the United States of America, Article 2 of the Treaty on Extradition between the Republic of Korea and Japan, and Article 2 of the Treaty on Extradition between the Republic of Korea and the People’s Republic of China, crimes subject to extradition are defined as offenses punishable by “imprisonment of at least one year,” which means enforced disappearances are included as an extraditable offense under these treaties.

Classifying Enforced Disappearances as a Political Crime and the Compliance with the Convention

69. Enforced disappearances involve the violation or endangerment of a person’s life and physical integrity, and under Article 8 (refusal of extradition in cases of political offenses), paragraph 1, subparagraph 3 of the Extradition Act, an offense that inflicts death or bodily harm on many people, threatens to do so, or creates a danger of doing so is not considered an extraditable political crime, which means enforced disappearances are not deemed as a political crime.

Extradition Authorities and Criteria, including Human Rights Safeguards

70. As a human rights safeguard, under Article 7 (reasons for mandatory refusal of extradition), subparagraph 4 of the Extradition Act, extradition shall not be granted if “it is believed that the offender might be punished or treated unfairly based on his or her race, religion, nationality, sex, political belief, or membership in a certain association,” and additionally, under Article 9 (reasons for discretionary refusal of extradition), subparagraph 5 of the Extradition Act, extradition may be refused if “it is deemed inhuman to extradite the offender considering the nature of the offense, the situation that the offender is in, etc.”

71. Regarding extradition decision authorities and criteria, under Article 12 (order by Minister of Justice to request extradition review) and Article 14 (extradition review by court) of the Extradition Act, the Minister of Justice, upon receiving an extradition request from the Minister of Foreign Affairs, forwards it to the Chief Prosecutor of the Seoul High Prosecutors’ Office, and the prosecutor then files a request for extradition review with the Seoul High Court, which renders a decision on the extradition review, thereby finalizing the extradition process.

Article 14

Mutual Legal Assistance

Mutual Legal Assistance Treaties Applicable to Enforced Disappearances

72. Article 1 (purpose) and Article 6 (restriction on mutual assistance) of the Act on International Judicial Mutual Assistance in Criminal Matters states ‘mutual assistance provided at the request of, and requesting to, any foreign country in connection with any investigation or trial of a criminal case,’ which applies to criminal cases that constitute an offense under domestic law and are subject to prosecution, and since enforced disappearances are punishable criminal offenses under the Criminal Act, mutual legal assistance is applicable to such cases.

73. The Government has concluded mutual legal assistance treaties with 33 countries (as of 10 December 2023), and for multilateral treaties, the European Convention on Mutual Assistance in Criminal Matters. These treaties above serve as a legal basis for international mutual legal assistance in enforced disappearances cases. Additionally, under Article 4

(reciprocity) of the Act on International Judicial Mutual Assistance in Criminal Matters, mutual legal assistance may also be provided even in the absence of a treaty.

Article 15

International Cooperation

Agreements Entered into or Amended for Victim Support and Search for the Missing Persons

74. Victim support and search for missing persons can be addressed through mutual legal assistance in criminal matters. Meanwhile, the Government has actively engaged in international dialogues and diplomatic efforts to raise global awareness and urge accountability for enforced disappearances involving North Korea, e.g., participation in the interactive dialogues with the Working Group on Arbitrary Detention and the Special Rapporteur on the Situation of Human Rights in North Korea at the United Nations Human Rights Council; engaging in the interactive dialogues with the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the Situation of Human Rights in North Korea at the United Nations General Assembly; Participation in North Korea's Universal Periodic Review (UPR). During various high-level diplomatic engagements, the ROK has called for international attention and cooperation for resolving issues related to South Korean abductees, detainees and prisoners of war held in North Korea by incorporating these into the Camp David Principles in August 2023 and the Korea-New Zealand Joint Statement in September 2024, both of which called for the immediate resolution of such cases. The Government will continue to pursue diplomatic efforts to enhance international awareness and cooperation for resolving enforced disappearances cases involving North Korean authorities.

Article 16

Non-refoulement

Legislation Including Enforced Disappearances as Grounds for Non-refoulement

75. Under Article 7 (reasons for mandatory refusal of extradition), subparagraph 4 of the Extradition Act, which states that “it is believed that the offender might be treated unfairly,” enforced disappearances can be interpreted as a valid ground for refusal, so separate legislation specifically including enforced disappearances, etc., as a reason for non-compulsory repatriation is deemed unnecessary.

76. Additionally, the Government enacted the Refugee Act in February 2012, which has been in effect since July 2013. Under Article 3 thereof, the principle of non-compulsory repatriation is established, ensuring that recognized refugees, humanitarian status holders and refugee applicants are not repatriated compulsorily to a country where they may face persecution.

77. In terms of the case where two North Korean fishermen were enforced to return to North Korea, the Government should have accepted the North Korean defectors, as citizens of the Republic of Korea under the Constitution, who have expressed their intention to be protected, but they were enforced to return at that time because they were criminals. Following this case, the Government amended the North Korean Defectors Protection and Settlement Support Act in January 2024 in order to enable the referral of the cases of serious non-political offenders to competent agencies for investigation or other necessary measures. The Government will continue to work on institutional improvements so that the intention of North Korean defectors to be protected is guaranteed. Moreover, if inter-Korean dialogue resumes in the future, the Government will continue the efforts to confirm the life or death and safety of the North Korean fishermen who were forcefully extradited.

Impact of Legislation Regarding Emergency Situations, etc. on the Prohibition of Repatriation

78. Even in emergency situations, the principle of non-repatriation to a country where there is a risk of enforced disappearances must be upheld. In accordance with Article 3 of the Refugee Act, Article 33 of the Convention Relating to the Status of Refugees and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government does not forcibly repatriate recognized refugees, humanitarian status holders or refugee applicants against their will.

Extradition Authorities and Decision Criteria

79. The extradition review procedures for criminals are specified under Chapter II, Section 2 of the Extradition Act.

Table 4

Extradition Review Procedures for Criminals

1	MOFA receives an extradition request from a foreign country
2	MOJ receives and reviews the request
3	Minister of Justice orders the Seoul High Prosecutors' Office to file an extradition review request
4	Seoul High Prosecutors' Office files the extradition review request with the Seoul High Court
5	Seoul High Court conducts the extradition review
6	Minister of Justice makes the final decision on extradition
7	If approved, the individual is extradited to the requesting country

80. The Government enforces deportation for individuals who have violated obligations under the Immigration Act, those whose grounds for entry prohibition are discovered or arise after entry, and those who have been sentenced to imprisonment or higher and subsequently released. These individuals are repatriated to a country of their nationality or citizenship. Under Article 58 thereof, when an immigration control official has finished an investigation of a foreigner, the head of the competent regional immigration service shall promptly examine and determine as to whether the suspect is subject to deportation. If the individual is deemed subject to deportation, the head of the regional immigration service may issue a deportation order.

81. Additionally, during refugee screening, authorities comprehensively review (i) whether the persecution claimed by the refugee applicant falls under the five grounds of persecution defined in the Refugee Act and the Refugee Convention (race, religion, nationality, membership in a particular social group, or political opinion); and (ii) whether there are sufficient grounds for a well-founded fear of persecution by the applicant's home government upon return. Foreigners are granted a humanitarian stay permit as prescribed by the Refugee Act when they have rational grounds for recognizing that their life, personal liberty, etc. is very likely to be infringed by torture, other inhuman treatment or punishment or other events even though they do not fall under the scope of refugees defined under the Refugee Act.

Appeal and Reexamination Authorities, Procedures, and Effects of Extradition Decisions

82. Under Article 59 of the Immigration Act, when the head of a regional immigration service issues a written order of deportation, the Government notifies the individual of their right to appeal to the Minister of Justice, and if an appeal is filed, the Minister of Justice

reviews and determines the legality of the deportation order. A foreign national who wishes to challenge a deportation order must submit an appeal to the Minister of Justice through the head of a regional immigration service within seven days from the date of receiving the written order of deportation. Upon receiving the appeal, the Minister of Justice reviews its validity and notifies the head of the Regional Immigration Service of the decision. If the Minister of Justice determines that the appeal is with merit, the head of the regional immigration service must immediately inform the individual and, if the individual is in detention, release them without delay. Under Article 61 of the Immigration Act, even if the appeal is deemed without merit, the Minister of Justice may allow the individual to stay in the ROK under exceptional circumstances, including cases where the individual is a former national of the ROK or other special circumstances warrant their continued stay. Additionally, if a foreign national is a victim of domestic violence, sexual violence, child abuse or human trafficking, and court proceedings, law enforcement investigations or other legal remedies are ongoing, the execution of the deportation order may be suspended, or protective detention may be temporarily lifted with necessary conditions.

83. A refugee applicant who wishes to appeal a decision of non-recognition of refugee status may file an objection with the Minister of Justice within 30 days from the date of notification (Article 21, paragraph 1 of the Refugee Act). Regardless of whether the refugee applicant files an objection, they may also file an administrative lawsuit in court to challenge the decision, ensuring legal recourse for appeals. Additionally, a refugee applicant is allowed to stay in the ROK until a final decision on refugee status is made (if an administrative appeal or lawsuit regarding a decision of non-recognition of refugee status is in progress, the applicant may remain in Korea until the conclusion of the legal proceedings).

84. When a North Korean defector expresses their intention to be protected by the Republic of Korea, pursuant to the United Defense Act and North Korean Defectors Protection and Settlement Support Act, a human rights protection officer at the North Korean Defector Protection Center confirms their intention to be repatriated and whether there has been a human rights violation during investigation. When a North Korean defector expresses their intention to be repatriated, the Government cannot deport them against their will.

Training for Officers Dealing with Deportation of Foreigners

85. To strengthen the protection of foreign nationals' human rights through compliance with due process, the Government provides in-person and online training for officials responsible for investigation, case review and foreign detainee management under the Immigration Act. Additionally, for newly appointed public officials, specialized training programs on relevant procedures are provided. To ensure compliance with due process during the use of force against detained foreign nationals, the Government establishes an annual inspection plan for detention facilities, conducting at least one inspection per year under Article 91-2 of the Detailed Enforcement Regulations on Foreigner Protection Rules.

Article 17

Secret Detention and Deprivation of Liberty

Prohibition of Secret or Unofficial Detention Under Domestic Law and Conditions and Authorities for Ordering Deprivation of Liberty

86. Article 12, Paragraph 1 of the Constitution states that "all citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized, or interrogated except as provided by Act. No person shall be punished, placed under preventive order, or subject to involuntary labor except as provided by Act and through lawful procedures," prohibiting secret and unofficial detention.

87. Additionally, Article 12, Paragraph 3 of the Constitution states that "warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure, or search." Furthermore, Chapter IX (summons and detention of criminal defendant), Article 70 of the Criminal Procedure Act establishes strict procedural requirements for detention, including specific grounds for detention. Additionally, under Article 215-2 thereof, even if a person is arrested or detained, they have the right to request

a judicial review of the legality of their detention. These apply equally under the Military Court Act.

Prompt Notification, Access to Defense Counsel, and Consular Notification

88. Under the Constitution and the Criminal Procedure Act, when a suspect is arrested (detained,) authorities must notify the suspect's defense counsel or a designated individual without delay in writing, wherein the name of the criminal case, the time and place of the arrest, a summary of the alleged crime, the reason for the arrest and the right to appoint defense counsel shall be included in the notification (Article 12, paragraph 4 of the Constitution). Additionally, a defense counsel or a person intending to serve as defense counsel is entitled to meet with the detained criminal suspect or defendant, and investigative authorities must allow such meetings at the request of the suspect (Article 34 of the Criminal Procedure Act). The Military Court Act provides the same legal guarantees regarding the right to legal assistance as stipulated in the Criminal Procedure Act.

Communication and Visitation Rights for Family and Conditions for Consular Access

89. Under the Criminal Procedure Act, a detained defendant has the right to meet with individuals other than defense counsel, however, if there is reasonable suspicion that the detainee may tamper with evidence, the court may restrict meetings with non-lawyers (Articles 89 and 91). Even in such cases, access to defense counsel or individuals intending to serve as defense counsel cannot be restricted.

90. Article 36 (communication and contact with nationals of the sending state) of the Vienna Convention on Consular Relations which the Government ratified and acceded to, consular officers shall be free to communicate with nationals of the sending state.

Independent Institution and Mechanism for Monitoring Places of Detention

91. The Government has established and operates the National Human Rights Commission of Korea (hereinafter, "NHRCK") as an independent institution to protect the inalienable fundamental human rights of all individuals and to uphold the recognition of human dignity and worth (Article 1 (purpose) of the National Human Rights Commission of Korea Act). The NHRCK has the authority to conduct visits and investigations of detention and protective facilities if deemed necessary by its resolution (Article 24 (visits and investigation of facilities) of the National Human Rights Commission of Korea Act), and to ensure that facility inmates' right to petition serves as an effective remedy, the law mandates that if an inmate intends to file a petition with the Commission, the facility must immediately provide the necessary time, space, and resources for drafting the petition (Article 31 (guarantee of petition rights of internees at confinement or caring facilities) of the National Human Rights Commission of Korea Act).

92. When the NHRCK receives a petition from a concerned party or a third party, or when acting ex officio, it has the authority to visit and investigate detention facilities, including police holding cells. During an investigation, the NHRCK can conduct interviews with detainees without the presence of facility staff. If the NHRCK requests the submission of materials, on-site investigations, or interviews with involved parties and relevant personnel from the police, the police are required to fully cooperate to facilitate the smooth progress of the investigation, unless there is a valid reason to refuse. If the NHRCK determines that the allegations constitute a criminal act requiring prosecution, it has the authority to file a criminal complaint, and if a human rights violation is identified, the NHRCK can recommend policy improvements or corrective measures to the relevant government institutions.

93. Detainees can file complaints regarding torture or ill-treatment with the independent body, the NHRCK. If the NHRCK requests cooperation from correctional institutions for document submissions, on-site investigations, or interviews with inmates, the institutions are fully cooperating, unless there are exceptional reasons. When an NHRCK investigator interviews an inmate, the institution must provide an appropriate setting to ensure a free and confidential investigation; limit staff participation to guarantee the secrecy of the interview; and prohibit eavesdropping or recording of the interview. Moreover, the NHRCK has the authority to visit detention facilities ex officio. Even without prior notice, when an NHRCK

investigator visits a correctional facility for an investigation related to a petition, the institution must allow the investigation to proceed, including interviews with detainees.

Table 5

On-Site Investigation Status of the NHRCK

2019	Treatment of detainees during extreme heat and cold (7 facilities)
2020	Use of protective equipment inside correctional facilities (10 facilities)
2021	Medical treatment, availability and operation of medical resources (10 facilities)
2022	Protective custody, court appearances, and detention environment (6 facilities)
2023	Management, medical care, and investigation and disciplinary measures for detainees with mental illness (4 facilities)

94. Under Article 24 of the National Human Rights Commission of Korea Act, the NHRCK conducts at least one annual inspection of foreigner detention facilities, and if necessary to protect and enhance human rights, the NHRCK may recommend institutional reforms or corrective actions. Institutions that receive such recommendations must notify the Commission of their implementation plans within 90 days from the date of receiving the recommendation, thereby establishing a monitoring mechanism for detention facilities. Additionally, if a foreigner detained in a protection facility experiences human rights violations or other unfair treatment, they may file a petition with the NHRCK under Article 31 of the National Human Rights Commission of Korea Act. Furthermore, to ensure compliance with due process during the use of force against detainees, the Ministry of Justice formulates and implements an annual inspection plan for detention facilities at least once per year under Article 91-2 of the Detailed Enforcement Regulations on Foreigner Protection Rules.

95. The NHRCK also has the authority to visit and investigate juvenile detention centers under Article 24 (visits and investigation of facilities) of the National Human Rights Commission of Korea Act. During such visits, the NHRCK may interview staffs at juvenile detention center and detained juveniles, and may receive oral or written statements regarding facts and opinions. Additionally, under Article 25 (recommendation of improvement or correction of policies and practices) thereof, the NHRCK may, if deemed necessary to protect and improve human rights, recommend relevant agencies, etc., to improve or correct specific policies and practices, or present opinions thereon.

Table 6

On-Site Investigation Status of the NHRCK

2006	Busan and Chuncheon Juvenile Detention Centers, Seoul Juvenile Classification Review Center
2015	Daegu, Daejeon, Cheongju and Anyang Juvenile Detention Centers
2018	Seoul Juvenile Classification Review Center, Contracted Agencies (Busan, Daegu, Gwangju, Daejeon, Chuncheon and Jeju Juvenile Detention Centers)
2023	Seoul, Anyang and Busan Juvenile Detention Centers

96. The Human Rights Bureau of the Ministry of Justice conducts annual inspections of correctional facilities, juvenile detention centers and detention facilities for foreigners under its jurisdiction. During these inspections, on-site visits are conducted to ensure that facilities comply with relevant regulations and are managed in a human rights-friendly manner. The Ministry directly interviews detainees to assess the adequacy of communication and visitation rights, medical treatment, and overall conditions. Additionally, investigations are

conducted to verify whether procedures for using protective equipment were lawful and appropriate; and serious incidents, such as deaths in custody, involved human rights violations. If the symptoms concerning potential human rights violations are identified, the Ministry of Justice orders corrective or improvement measures for the respective institution. Furthermore, the “Human Rights Violation Reporting Center,” operated under the Human Rights Bureau of the Ministry of Justice, receives, independently investigates and processes complaints of human rights violations within detention and protection facilities. If a human rights violation is confirmed, the Bureau may refer the case for criminal investigation or disciplinary action, order corrective measures, facilitate state compensation or legal assistance or recommend institutional reforms.

Existence of Administrative Mechanisms to Inspect Correctional Facilities

97. The Minister of Justice mandates at least one annual inspection by designated officials to assess the operation of correctional facilities, including duties and conduct of correctional officers and treatment and human rights conditions of detainees.¹² This inspection mechanism is also stipulated under Article 230 (inspection of places of arrest and detention by military prosecutors) of the Military Court Act, Article 7 (inspection rounds of military correctional facilities) of the Act on the Execution of Criminal Penalties in the Armed Forces and the Treatment of Military Inmates.

Ensuring Right to Bring Proceedings Before the Court for Review of the Legality of Detention

98. Under the Constitution and the Criminal Procedure Act, a criminal suspect who is arrested or detained, his/her defense counsel, legal representative, spouse, lineal relative, sibling, family member, cohabitant, or employer may request the competent court to review the legality of the arrest or detention, and a police officer who has arrested or detained a criminal suspect shall notify the arrested or detained criminal suspect or a person designated by the suspect among the persons specified above that the suspect has a right to request for the review on legality of the arrest or detention (Article 214-2). Upon receiving such a request, the court must examine the suspect and review the evidence within 48 hours of the petition being submitted. If the court finds the request justified, it must order the release of the detained suspect. Article 252 (review of legality of arrest and detention) of the Military Court Act provides the same legal guarantees, ensuring the right to request a judicial review of the legality of their arrest or detention.

99. Furthermore, Article 3 of the Habeas Corpus Act states that where the confinement of an inmate is illegally initiated or an inmate remains confined even after the cause that gave rise to such confinement ceases to exist, such inmate¹³, or his/her legal representative, guardian, spouse, lineal blood relative, brother, sister, cohabitant, employer or an employee at the relevant confinement facility may file a petition for habeas corpus with a court, as prescribed by this Act.

100. The Government allows foreign nationals held in protection facilities, as well as their legal representatives, to file an objection with the Minister of Justice regarding their detention. If an objection is filed, the Minister of Justice promptly reviews the relevant documents and, if the objection is deemed with merit, issues a decision to release the individual from protection. Additionally, protected foreign nationals or their legal representatives may challenge the legality of deportation or detention by filing an administrative appeal for revocation or suspension of enforcement under the Administrative Appeals Act or filing an

¹² *Act on Execution of Sentences and Treatment of Inmates* Article 8 (Circuit Inspection on Correctional Facilities) The Minister of Justice shall conduct a circuit inspection on the correctional facilities or have a public official under his or her control conduct the said inspection at least once every year, in order to grasp actual conditions of the operation of correctional facilities, the services of correctional officers, the treatment and human rights of an inmate, etc.

¹³ The term ‘inmates’ refers to an individual who is admitted, protected, or confined against their free will in a medical facility, welfare facility, custodial institution, or protective facility managed by the state, a local government, a public organization, or an individual, or a private entity. However, this does not include individuals who are arrested or detained through criminal procedures, those convicted or held in protective custody under the *Immigration Act*.

administrative lawsuit for revocation or suspension of enforcement under the Administrative Litigation Act. From June 2025, foreign nationals held in detention centers or their legal representatives may file appeals regarding their detention through the Immigration Detention Committee, an independent and impartial deliberative body.

101. In accordance with Article 43 (appeal) of the Juvenile Act, when making a ruling regarding protective disposition and additional disposition, etc. or a ruling to change it, the juvenile concerned, his/her guardian, assistant or legal representative may file an appeal against the ruling with the competent family court or the collegiate division of the district court.

Table 7

Status of Appeals by Juvenile Detainees

Category	Year				
	2019	2020	2021	2022	2023
Appeal	232	239	195	221	284

Unit: number of cases.

Official Detention Registers

102. In the Republic of Korea, when a criminal suspect or defendant is deprived of liberty due to arrest by warrant, emergency arrest, on-the-spot arrest or execution of a detention warrant, all detention-related information, including date and time of arrest, location of arrest, place of detention or confinement and details of immediate transfer upon arrest, is immediately recorded in investigation-related forms prescribed by the Rules on the Management of Prosecutorial Cases (Ministry of Justice Ordinance No. 1071), to ensure that all detention-related information is systematically documented.

103. Under Article 16 (confinement of new inmate) of the Act on Execution of Sentences and Treatment of Inmates, with respect to any person newly confined in a correctional facility (hereinafter, “new inmate”), the relevant warden shall confine such person after examining a written direction for execution, court records, and other documents necessary for confinement, and additionally, under Article 19 (preparation of register of confinement, etc.) thereof, as well as Article 3 (admission procedures and family notification of new and transferred inmates) of the Ministry of Justice Guidelines on Classification, Transfer, and Records of Inmates, authorities are required to prepare and maintain records such as the register of confinement, inmate register and sentence completion register within three days of admission, and digital record and manage inmate information (personal details, detention status, and sentence duration, etc.) using a computerized system (correctional information system.)

104. For foreign nationals held in protective detention facilities, the Government maintains foreign detainee records, documenting personal information, health conditions (including diseases), the issuing authority and date of the detention order, admission and release dates, etc., and death records, which separately document the cause of death if a foreign detainee dies while in custody.

105. When admitting juvenile detainees into a juvenile detention center or juvenile classification review center, the warden must verify the identity of the individual based on the court’s decision issued by the Juvenile Division, the Minister of Justice’s transfer approval and the district court judge’s detention approval, and once a juvenile is admitted, the facility maintains an individual juvenile record, documenting all relevant information until the individual is released. From the moment of admission until release, all records related to juvenile detainees are managed and stored in the “Total Education and Management System (TEAMS).” To ensure accurate and complete maintenance of records, regular supervision and monitoring are conducted to prevent omissions of data.

106. Under Article 19 of the Enforcement Decree of the Act on Execution of Sentences and Treatment of Inmates, correctional facilities shall prepare and maintain a register of confinement, list of inmates and book of expiration of period of punishment and record

necessary matters therein. These are also stipulated under Article 19 of the Enforcement Decree of the Act on the Execution of Criminal Penalties in the Armed Forces and the Treatment of Military Inmates. Additionally, under the Act on Promotion of the Digitalization of the Criminal Justice Process, criminal justice institutions including the police, prosecution, and other agencies have adopted the Criminal Justice Information System. This system ensures that all arrests and detentions are digitally recorded and managed, including personal details of suspects and date, time, and location of arrest or detention. In the military sector, a Military Justice Information System is currently under development, with implementation planned for early 2026, enabling military criminal justice institutions to effectively manage relevant cases.

107. Under the North Korean Defectors Protection and Settlement Support Act, the National Intelligence Service conducts necessary investigations and temporary protective measures for North Korean defectors seeking protection from the Republic of Korea. Such investigation and temporary protection is carried out, as a procedure to provide necessary protection and support for the settlement in the Republic of Korea, with the free consent of the defectors, and they may withdraw their application and leave the temporary protection facility if a defector no longer wishes to be under protection, therefore does not subject to enforced disappearances as provided in Article 2 of the Convention.

Article 18

Access to Information

Existing Legislation on Ensuring Access to Information for Individuals with Legitimate Interests

108. Under the Criminal Procedure Act, when a suspect is arrested (detained), the authorities must notify the defense counsel or a person designated by the suspect in writing without delay of the name of offense, the time and place of arrest, the gist of charge, and the cause for arrest, and the right to appoint a defense counsel (Article 87). Defendants, defense counsels and legal representatives have the right to inspect or copy case-related documents or evidence during trial proceedings (Article 35, paragraphs 1 and 2).

109. In the case of emergency arrest without a warrant, an emergency arrest report must be prepared (Article 200-3, paragraph 3 of the Criminal Procedure Act), and defense counsels, etc. are recognized to have the right to access and copy related documents (Article 200-4, paragraph 5 of the Criminal Procedure Act). A legal counsel to participate in a suspect's interrogation may inspect the detention warrant request submitted to the district court judge, the attached documents on complaint, the suspect's written statements and the documents submitted by the suspect (Article 96-21 of the Regulations on Criminal Procedure).

110. The Official Information Disclosure Act aims to ensure people's rights to know and to secure people's participation in state affairs and the transparency of the operation of state affairs by prescribing matters necessary for people's requests for the disclosure of information kept and controlled by public institutions and the obligations of public institutions to disclose such information (Article 1), and every national has a right to request information disclosure (Article 5). Regarding information disclosure requests by foreigners, the eligibility is limited to a person who resides at a fixed residence or stays temporarily for academic research in the Republic of Korea or a corporation or an organization which has an office in the Republic of Korea (Article 5 and Article 3 of the Enforcement Decree thereof).

Existing Legislation Restricting Access to Information for Individuals with Legitimate Interests

111. The Criminal Procedure Act stipulates that where it is feared to seriously harm the security of life or body of a party involved in the case, including a victim or a witness, the presiding judge may take protective measures upon the inspection or copying so that the personal information, such as name, etc. of a party involved in the case, shall not be disclosed (Article 35 Paragraph 3).

112. Furthermore, where a possibility exists that the investigation is interfered with due to the possible destruction of evidence or runaway of the suspect, the public prosecutor may submit his/her opinion on the restriction of the perusal of the complaint, written accusation and the statement of the suspect and the documents submitted by the suspect excluding the request for a warrant of confinement, and if the opinion of the public prosecutor is deemed reasonable, the judge of the district court may restrict the perusal of the whole or partial of the documents (Article 96-21 Paragraph 2 of the Regulations on Criminal Procedure).

Existing Legislation and Mechanisms for Protecting Individuals Requesting Access to Information

113. Public officials who threaten or disadvantage individuals requesting access to information as specified in Article 18 of the Convention may be punished under the Criminal Act for abandonment of duties (Article 122), abuse of authority (Article 123), violence and cruel act (Article 125) of public officials.

114. Under the Official Information Disclosure Act, a person in charge of information disclosure of a public institution shall perform the duties of information disclosure in good faith, and shall not engage in any improper act, such as arbitrary determination of disclosure, intentional delay in processing, or unlawful refusal or evasion of disclosure (Article 6-2).

Article 19

Protection of Information

Guarantee of Non-Use of Genetic Data and Medical Information for Purposes Other Than the Search for the Disappeared

115. The Personal Information Protection Act is a general law that stipulates the processing and protection of personal information, including medical and genetic information of missing persons, which falls under its scope of application. Personal information of the data subject may be collected and used with the consent of the data subject, or when there is a special provision in the law; it is inevitable for compliance with legal obligations; and it is deemed necessary to protect the urgent life, body, or property interests of the data subject or a third party (subparagraphs under Article 15 Paragraph 1). Even when personal information is collected on legitimate grounds, only the minimum necessary information required for the purpose must be collected (Article 16 Paragraph 1).

116. Genetic and medical information may fall under “sensitive information” as defined in Article 23 of the Personal Information Protection Act, and sensitive information is strictly protected and cannot be processed unless separate consent from the data subject is obtained; or processing is required or permitted by law (subparagraphs under Article 23 Paragraph 1).

117. Under the Act on Use and Protection of DNA Identification Information (hereinafter, “DNAA”), the state may collect DNA samples from convicted individuals, detainees and crime scenes for investigations and prevention of crimes and the protection of citizens’ rights and interests. Article 11 Paragraph 1 of the DNAA prohibits the use of information on DNA identification for purposes other than searches and imposes criminal penalties for violations.

Information on the Use of Collected Data

118. A personal information processor (a public institution, corporation, organization, or individual that processes personal information) may use the collected personal information of a missing person for purposes other than the original collection purpose or provide it to a third party only if there is a special provision in another law; or it is deemed necessary to protect the urgent life, body, or property interests of the data subject or a third party (Article 18, paragraph 2 of the Personal Information Protection Act). Additionally, a recipient of the missing person’s personal information is strictly prohibited from using the information for purposes other than those for which it was provided or from sharing it with a third party unless separate consent from the data subject is obtained or there is a special provision in another law (Article 19).

119. Particularly, genetic and medical information, classified as “sensitive information” under the Personal Information Protection Act, may only be processed if explicit and separate consent is obtained from the data subject; or processing is required or permitted by law, strictly restricting use and provision for purposes other than the original intent (Article 23 of the Act).

120. Under Articles 5 through 7 of the DNAA, information on DNA identification analyzed from collected samples is encrypted and stored in separate databases. In accordance with Article 3, DNA identification information and personal data are managed separately in distinct databases. When new identification information is entered into the database, a cross-checking process is conducted to determine matches, and once a match is found, personal data is subsequently validated to identify the individual’s identity.

121. However, under the DNAA, the use of the DNA database is strictly limited to cases where a prosecutor or judicial police officer deems a location to be a “crime scene,” specifically for identifying unidentified bodies, rather than for general missing person searches. The DNAA does not provide a legal basis for collecting DNA samples from adult missing persons or their family members, making it difficult to be deemed as a general law for searching missing persons.

Regulations on the Protection and Final Storage of Genetic and Medical Information

122. Pursuant to Article 30 of the Enforcement Decree of the Personal Information Protection Act, personal information must be protected from loss, theft, leakage, forgery, alteration or damage through technical, administrative and physical safeguards. For example, measures such as access control for personal information processing systems, encryption of stored personal information or destruction of personal information should be taken when no longer necessary. While the application and specific methods of each provision may vary depending on factors such as the scale of data processing, target subjects and the types of personal information being processed, all personal information processors within South Korea are legally required to comply, and non-compliance may result in fines and other penalties.

123. Under Articles 5 and 6 of the DNAA, to prevent duplication within the database, individuals whose DNA identification information is already stored are excluded from further sample collection. In accordance with Article 13 paragraphs 1 through 4 thereof, DNA identification information must be deleted from the database if a convicted individual is later found not guilty through various legal procedures or if they have passed away. Under Article 13 paragraph 5, DNA identification information collected from crime scenes must also be deleted once an individual’s identity has been confirmed.

Existence of Databases of Genetic Data

124. Since 26 July 2010, the DNAA has been enforced to swiftly apprehend perpetrators of serious crimes, contribute to criminal investigations and crime prevention and protect the rights and interests of the public. Based on this law, DNA identification information is collected and managed for individuals who have committed serious crimes or crimes with a high risk of recidivism.

Article 20

Restriction on Information

Domestic Laws Restricting Access to Information on Persons Deprived of Liberty

125. The Official Information Disclosure Act ensures people’s rights to know by disclosing information kept and managed by public institutions in an active manner (Articles 1 and 3). In addition, every national has a right to request information disclosure, and foreigners are also guaranteed the right to apply for information disclosure under certain conditions (Article 5 of the Official Information Disclosure Act and Article 3 of the Enforcement Decree thereof). One can submit an application by physical presence at public institutions or by mail, facsimile, or information and communications network (Article 6 of the Enforcement Decree

thereof). Accordingly, the Official Information Disclosure Act gives every national the right to request information disclosure in various ways regardless of whether they are deprived of liberty.

126. Access to information of persons deprived of liberty is strictly regulated under Article 6 and the following provisions of the Act on the Lapse of Criminal Sentences, which stipulate that such information may only be inquired into to the minimum extent necessary for legitimate purposes. Furthermore, records such as the name registry of inmates and criminal history data whose retention period has expired are subject to deletion, ensuring the strict management of related information.

127. When an inmate is first admitted to a correctional facility or transferred to another facility, pursuant to Article 21 (notification of confinement) of the Act on Execution of Sentences and Treatment of Inmates, the facility shall notify such fact to the family of an inmate, without delay, provided, however, that this shall not apply where an inmate does not wish such notification.

128. In addition, certificates regarding the confinement status of an inmate (such as proof of confinement or release) may be issued upon request by individuals falling under each subparagraph of Article 145-2 (issuing a certificate) of the Enforcement Decree of the Act on Execution of Sentences and Treatment of Inmates, including: an inmate, any person designated by an inmate, a released person, or any person designated by a released person.

129. The Government, pursuant to Article 10 of the Rules on the Protection of Foreign Nationals (Ministry of Justice Ordinance) and Article 12 of the Enforcement Rules thereof (Directive of the Ministry of Justice), prohibits the possession of items that can be used to film or record others or the facility, such as mobile phones and chargers, or items that may cause fire, while a protected foreign detainee is staying in a protective detention facility. However, to enhance the right of protected foreign nationals to access information, the Government is expanding the use of open-type protection facilities,¹⁴ which allow for the use of personal mobile phones and internet-connected PCs. In addition, public telephones are installed within the facilities and are freely available for use by protected foreign nationals.

130. Juvenile training schools and juvenile classification review centers manage, use and provide personal information in accordance with the Official Information Disclosure Act and the Personal Information Protection Act. However, if there is a concern that such disclosure may unjustly infringe upon the interests of the data subject or a third party, access to the information may be exceptionally restricted based on Article 9 (information subject to non-disclosure) of the Official Information Disclosure Act, Article 18 (restriction on repurposing personal information and provision thereof) of the Personal Information Protection Act and Article 12 (detailed standards for non-disclosure of information) of the Ministry of Justice Administrative Information Disclosure Guidelines.

Guarantee of Judicial Remedies for Information Access and Means of Appeal Against the Denial of Disclosure of Information on Persons Deprived of Liberty

131. If a requester objects to a non-disclosure or partial disclosure decision by a public institution regarding an information disclosure request, or if no disclosure decision is made within 20 days of the request, the requester may file an objection with the relevant public institution (pursuant to Article 18 of the Official Information Disclosure Act). In addition, the requester may pursue an administrative appeal as prescribed by the Administrative Appeals Act (Article 19) or file an administrative lawsuit in accordance with the Administrative Litigation Act (Article 20).

¹⁴ Designed to move away from the traditional image of detention facilities, for example by removing iron bars and keeping doors open to allow freedom of movement within the facility, and by providing designated areas for mobile phone use and internet access, thereby ensuring greater autonomy and communication with the outside world (see annex 3).

Article 21

Release Measures

Current Legislation and Practices Ensuring the Verification of Release

132. When a suspect who has been urgently arrested without the prosecutor requesting an arrest warrant is released, the prosecutor must notify the court in writing within 30 days (Article 200-4 Paragraph 4 of the Criminal Procedure Act). Additionally, if a judicial police officer releases a suspect who was urgently arrested without requesting an arrest warrant, the officer must immediately report the release to the prosecutor (Article 200-4 Paragraph 6 of the Criminal Procedure Act).

133. The Government carries out release procedures in accordance with Article 123 of the Act on Execution of Sentences and Treatment of Inmates, based on a pardon, the expiration of the sentence or an order of release by a person with proper authority. Furthermore, Article 124 thereof stipulates the timing of release, and to comply with the legal release schedule, the Ministry of Justice verifies relevant documents and ensures that detainees are released in accordance with the timeframe set forth by law.

134. Under the Habeas Corpus Act, a person whose personal liberty is unjustly restricted due to an unlawful administrative disposition or confinement in facilities such as medical institutions, welfare facilities, detention centers or protection facilities by a private individual may file a petition for relief with the court. Eligible petitioners include the detainee, their legal representative, guardian, or spouse. Upon receiving such a petition, the court initiates a hearing to determine whether the confinement is lawful and whether there is a continuing necessity for confinement. During the proceedings, the court may, if deemed necessary, seek opinions or diagnoses regarding the mental or psychological condition of the detainee from psychiatrists, psychologists, social welfare experts, or other relevant professionals.

Authorities Responsible for the Supervision of the Release

135. For inmates released from correctional facilities, the release is carried out pursuant to Article 123 (Release) of the Act on Execution of Sentences and Treatment of Inmates, which states that the release of an inmate shall be executed according to pardon, expiration of period of punishment, or order of an authorized person. The timing of such release is regulated differently depending on the type of release, in accordance with Article 124 (Timing for Release) thereof:

Type of release

- The release by pardon, parole, exemption from punishment, and reduction of punishment: within 12 hours after the arrival of documents thereof;
- The release by expiration of period of punishment: the expiration date of the relevant period of punishment;
- The release by order of an authorized person: within 5 hours after the arrival of documents.

Article 22

Prohibition of Obstruction

Legislation Ensuring the Right to Take Proceedings Before a Court for Persons Deprived of Liberty

136. If a public official fails to document deprivation of liberty or refuses to provide information on deprivation of liberty, such actions may be subject to criminal punishment under neglect of duties under the Criminal Act (Article 122) or abuse of authority (Article 123).

Article 23

Education and Training

Training Programs and Measures to Prevent Law Enforcement Officials from Being Involved in Enforced Disappearances

137. The Government continuously conducts a variety of human rights training programs for law enforcement officials, making multifaceted efforts to prevent and respond to cases of enforced disappearances. Through the Ministry of Justice's own high-quality "In-house Instructor Training Program," in-house instructors are trained from among officials in different fields, such as prosecution, correctional administration, probation and immigration control. These in-house instructors provide human rights training tailored to the specific characteristics of each field, covering topics such as an introduction to human rights, relevant international human rights treaties, internal guidelines and "human rights sensitivity training" designed to improve empathy and communication skills in dealing with detainees. In addition, the Ministry is gradually expanding external instructor-led human rights training in which university professors, lawyers and human rights experts are appointed as external instructors to deliver training directly to law enforcement officials at institutions nationwide.

138. Also, the Government provides training aimed at enhancing the human rights awareness of prosecutors as well as officials in the prosecution, probation, immigration control and correctional fields. This training is designed to ensure that law enforcement practices comply with international law and human rights treaties. Key topics include trafficking investigations, international conventions, the Immigration Act (covering protection, deportation, departure recommendations and orders), correctional science and understanding of international correctional systems. Human rights education organized by the Institute of Justice was provided to 5,598 officials in 2022, 4,507 in 2023, and 5,318 in 2024.

139. Regarding Article 23: Training and Measures:

- The Institute of Justice offers training programs for new recruits and those promoted (3,018 trainees in 2022, 3,417 in 2023, and 3,475 in 2024), but does not operate a specific training course for "understanding the duty to report to superiors" and "enforced disappearance".

Category	2022	2023	2024
Number of trainees (new recruits and those promoted)	3 018	3 417	3 475

140. The NHRCK provides human rights education necessary to raise awareness and improve the human rights consciousness of all individuals. In particular, it is authorized to consult with the Minister of National Defense for the provision of human rights training aimed at improving and preventing human rights violations in the military (Article 26 of the National Human Rights Commission of Korea Act). In response, the Ministry of National Defense has defined "military personnel engaged in human rights affairs" to include military prosecutors, prosecution investigators and clerks under Articles 41 and 47 of the Military Court Act, military judicial police officers under Article 43 thereof, and military correctional officers under Article 2 of the Act on the Execution of Punishments and Treatment of Military Inmates. Human rights training programs specifically for these personnel are operated under Article 24 of the Directive on Military Human Rights Affairs. These training programs are conducted as one-day or multi-day sessions, inviting external lecturers and in-house human rights experts from the military. When necessary, cooperation with human rights-related institutions and organizations such as the NHRCK is also facilitated.

Measures to Ensure Awareness of the Duty to Report Acts of Enforced Disappearance to Superiors/Legislation Prohibiting Orders Related to Enforced Disappearances and Guaranteeing Non-Punishment for Refusal to Follow Such Orders

141. Under Article 56 (duty of fidelity) of the State Public Officials Act, all public officials must faithfully perform their duties in compliance with laws and regulations. Article 57 (duty of obedience) further stipulates that public official must obey the lawful instructions of their superiors when performing their duties. In this regard, the Supreme Court of Korea has consistently ruled that a superior has no authority to order a subordinate to commit an unlawful act, including criminal behavior, and that if a superior's order is clearly unlawful or illegal, it cannot be regarded as a legitimate instruction and thus the subordinate has no obligation to comply to such orders from the superiors.¹⁵

Article 24
Victim Remedies

How the Broad Definition of Victim is Reflected in Domestic Law

142. The Government has enacted the Crime Victim Protection Act as a separate law to establish fundamental policies for the protection and support of crime victims, and to contribute to their welfare by providing assistance to individuals who have suffered harm to life or physical well-being due to the criminal acts of others. Under this Act, the definition of crime victim is broad and inclusive, covering (1) individuals harmed by another person's criminal act, as well as their spouses (including common-law spouses), lineal ascendants and descendants, and siblings; or (2) individuals who suffer harm in the course of preventing crime or assisting crime victims. This broad definition under the Crime Victim Protection Act thus encompasses most of the scope of victims enforced disappearance as defined under the Convention.

Mechanism to Guarantee the Right to Know the Truth Regarding Enforced Disappearances

143. The Crime Victim Protection Act concretizes necessary provisions based on the Basic Ideology (Article 2) which states, "a crime victim has the right to participate in various legal procedures in connection with the relevant case."

144. The Government, (1) under Article 2 (basic ideology) and Article 8 (guarantee of participation in criminal procedures) of the Crime Victim Protection Act, guarantees crime victims the right to participate in various legal procedures including criminal proceedings, and (2) under Article 8-2 (provision of information to crime victims), stipulates the State's obligation to provide information related to crime victims' rights in criminal procedures. Crime victims, based on the Criminal Procedure Act and the Crime Victim Protection Act, may request investigative authorities to provide information on investigation results, trial schedules, trial outcomes, execution of sentences and enforcement of probation related to criminal procedures.

145. The TRC, in accordance with Article 28 (notification of decisions and filing objections) of the PSA, is required to promptly notify the applicant for truth investigation, the subject of investigation and any witnesses of decisions such as dismissal, commencement of investigation, confirmation of truth or inability to confirm truth, specifying the reasons for such decisions. The notification must also inform the recipients of the right to file an objection, the relevant procedures and time limits, and other necessary details. Recipients of the notification may file a written objection with the TRC within 60 days from the date of receiving the notice, and the TRC must, within 60 days from the date of receipt of the objection, make a decision and notify the result in writing without delay. Additionally, pursuant to Article 32 (reporting and granting opportunity to state opinions) thereof, when investigating the conduct of the subject of investigation, the TRC must provide an

¹⁵ Supreme court decision 99Do636 rendered 23 April, 1999, supreme court decision 2011Do5329 rendered 28 November, 2013, En Banc decision of the supreme court decision 96Do3376 rendered 17 April, 1997, supreme court decision 87Do2358 rendered 23 February, 1988.

opportunity to present opinions to the subject, their spouse, direct descendants, or other interested parties. Those who are eligible to make statements may request to review the evidence materials that form the basis of the investigation report and may appoint a lawyer.

Guarantee of the Right to be Informed of the Progress and Results of Investigations and to Participate in the Proceedings

146. The Crime Victim Protection Act specifically stipulates the right of victims to participate in criminal procedures as follows.

147. The Korean Prosecution Service, in accordance with the Criminal Procedure Act (Articles 258 through 259-2), the Crime Victim Protection Act (Articles 8 and 8-2), the Enforcement Decree thereof (Articles 10 and 10-2)¹⁶, and relevant guidelines on the protection and support of crime victims, operates a notification system for crime victims to provide information regarding the victim's rights, case dispositions, commencement of trial, trial results, detention status and release. The Prosecution Service also guarantees that crime victims can exercise their rights in criminal procedures, such as participating in trial proceedings and making statements, in accordance with the Constitution (Article 27, paragraph 5), the Criminal Procedure Act (Article 294-2), and the Regulations on Criminal Procedure (Articles 134-10 and 134-11).¹⁷

148. In addition, the Korean National Police Agency, pursuant to Article 11 of the Rules on Police Investigations, must notify complainants and victims of the progress of investigations within 7 days from the date of initiating an investigation through report, complaint, or accusation. When more than three months have passed since the start of the investigation, or when deemed necessary by the police officer in charge, notification of the investigation status must also be provided. Furthermore, under Article 97 of the Rules on Police Investigations, the results of the investigation must be communicated to the suspect, complainant, and other related parties.

149. When a suspect is arrested or detained during the investigation, the date, time, and location of the arrest or detention, as well as a summary of the alleged offense, must be notified to the defense counsel or, where applicable, to the suspect's legal representative or spouse, in accordance with Articles 87 and 213-2 of the Criminal Procedure Act.

Mechanisms for Investigations and Determining the Whereabouts of Victims or Their Remains

150. In cases where the crime of enforced disappearances occurs, charges such as unlawful arrest or confinement, abduction or enticement, and human trafficking may be constituted. Under the general provisions of the Criminal Procedure Act, if there is suspicion of a crime of enforced disappearances, an investigation may be conducted to identify the perpetrator, establish the facts and evidence of the crime and determine the whereabouts of the victim or their remains. The Military Court Act also provides for the same provisions.

Rituals and Related Measures to Handle the Remains of the Missing Persons to their Families

151. When an unidentified body is suspected to be the remains of a missing person, the prosecution, under the general provisions of the Criminal Procedure Act, instructs the police to conduct a forensic examination or autopsy to verify the identity and cause of death, and to transfer the remains to the family.

152. When the remains of a missing person are discovered, judicial police officers must notify the prosecutor, determine whether an autopsy is required, and once the forensic examination or inspection is completed, promptly hand over the body and belongings to the bereaved family. However, if there is no person to claim the body or if the identity of the deceased remains unknown, the remains must be handed over to a Special Self-Governing

¹⁶ See Annex 1 (provisions on notification to crime victims).

¹⁷ See Annex 2 (provisions on the right of crime victims to make statements in judicial proceedings).

City Mayor, a Special Self-Governing Province Governor, or the head of a Si/Gun/Gu where the remains are located.

Collection of Genetic Information and Establishment of a Database for Disappeared Persons and their Relatives

153. Under the DNAA, DNA identification information of missing persons and their families or relatives is not collected. However, in the event of an unidentified body case, the identity of the deceased can be verified through a search of the DNA identification information database, pursuant to Article 11, paragraph 1, subparagraph 2 of the DNAA, for investigative purposes.

Procedures for Compensation and Reparation for Victims

154. Victims of enforced disappearances may file a lawsuit for damages against the Government under the State Compensation Act. If the court recognizes the State's liability and the victim receives a final and binding judgment in their favor, the Government shall provide compensation to the victim.

155. The Civil Act provides general provisions on tort liability (Article 750), allowing victims to claim damages against those who have caused harm through unlawful acts committed with intent or negligence. Therefore, victims of enforced disappearances may claim compensation from the perpetrator based on this provision. In particular, a person who infringes on another's body or liberty, or causes other forms of psychological suffering, is liable for non-property (emotional) damages as well (Article 751, paragraph 1 of the Civil Act). Furthermore, the court may order that such damages be paid in the form of periodic payments and may require the perpetrator to provide security to ensure enforcement (paragraph 2). If the harm results in the victim's death, the victim's lineal ascendants, lineal descendants, and spouse may claim compensation even in the absence of economic loss (Article 752). Upon the victim's death, the right to claim damages is inherited by the victim's heirs, who may exercise that right (see Supreme Court decision 69Da268 rendered 15 April 1969, etc.).

156. Article 24, paragraph 4 of the Convention, which the ROK has ratified, requires that States ensure victims of enforced disappearances have the right to fair and adequate compensation under their legal systems. In line with this, the government explicitly stipulates in Article 7 of the Crime Victim Protection Act that the State has a duty to provide necessary measures for the protection of crime victims, including counseling, medical services, financial assistance, and legal aid. Furthermore, the Government operates support systems for all crime victims including victims of enforced disappearances which include financial support for treatment and psychological therapy, psychological healing programs, and legal assistance. However, when financial support is already received through other laws or systems, such as the State Compensation Act, the corresponding amount is deducted from the total support payment.

Rehabilitation Programs for Victims of Enforced Disappearances

157. The Government is obligated to establish and operate temporary protection facilities to provide physical and psychological stability for victims of crime and their families, and to support their reintegration into society. In addition, the State is required to operate counseling and treatment programs to promote the psychological recovery of crime victims and their families (Article 7 loss recovery support, etc.) of the Crime Victim Protection Act).

158. The Government also operates psychological and physical healing programs, as well as programs to restore social relationships, through the National Trauma Recovery Center, aimed at victims and their families affected by state violence, hostile entities, and international terrorist organizations. Furthermore, in order to create healing communities where victims can safely return to daily life, the government conducts public activities to raise human rights awareness among citizens (Article 1 (Purpose) of the Act on the Establishment and Operation of the National Trauma Recovery Center).

Procedure for Issuance of Documents Regarding the Declaration of Absence of a Missing Persons

159. When the life or death of an absentee (a person who has left their former address or residence, Article 22, paragraph 1 of the Civil Act) has not been confirmed for five years, the court shall declare the person legally missing upon the request of an interested party or a public prosecutor. The same applies when a person who was in a war zone, aboard a sunken ship, on a crashed aircraft, or who has experienced other life-threatening disasters, has not been confirmed alive or dead for one year following the end of the war or disaster (Article 27, paragraphs 1 and 2 of the Civil Act). Once the court issues the declaration of disappearance, the person is deemed to be dead as of the date five years or one year after the disappearance (Article 28 of the Civil Act). A certified copy of the court judgment containing the declaration may be issued upon application by the party or a third party who proves a relevant interest, submitted to a court clerk (Article 162, paragraph 1 of the Civil Procedure Act). In addition, anyone may view and copy the judgment electronically via the internet or other computerized information processing systems (Article 163-2, paragraph 1).

160. When a person disappears, Section 3 (absence and disappearance) of the Civil Act provides regulations on the management of their property and the procedure for declaring them legally missing. Specifically, if the person's life or death remains unconfirmed for five years, the court may issue a declaration of disappearance upon request by an interested party or prosecutor, and the declaration may later be canceled if proof of survival is presented (Articles 27 and 29 of the Civil Act).

Procedures to Guarantee the Right to Form and Participate in Associations Related to Enforced Disappearances

161. Article 21, paragraph 1 of the Constitution guarantees all citizens the freedom of speech, press, assembly and association. In accordance with this provision, the right of victims to form and participate in associations related to enforced disappearances is comprehensively protected.

Article 25

Child Protection

Legislation Applicable to the Separation of Children Submitted to Enforced Disappearances and Tampering with Identity Records

162. The illegal separation of a child in the context of enforced disappearances may be punished under the Criminal Act as kidnapping or inducement of minors (Article 287) or trading in persons (Article 289). Acts such as falsifying, concealing or destroying documents that prove a child's true identity may be punished under invalidity of public documents and destruction of public goods (Article 141), counterfeit or alteration of official document (Article 225), preparation of false public document (Article 227), falsification or alteration of public electromagnetic records (Article 227-2) and destruction of evidence and special exception to relatives (Article 155) of the Criminal Act.

Procedures for the Search and Identification of Disappeared Children and the Restoration to Their Original Status

163. In order to protect children from harmful consequences arising from their illegal movement or retention, and to ensure their prompt return, the Act on the Implementation of the Hague Child Abduction Convention has been enacted and is in force.

Rights of Family to Search for Children Subject to Enforced Disappearances and Procedures to Review and Annul Adoptions

164. If there is no agreement between the parties regarding adoption, or if the adoption of a minor was not approved by the family court, the adoption is invalid (Article 883 of the Civil Act). Furthermore, in cases where the legal requirements for adoption under the Civil Act are not met, such as when parental consent for the adoption of a minor is absent (Article 870 of

the Civil Act), or when the declaration of intent to adopt was made through fraud or duress, the family court may be petitioned to cancel the adoption (Article 884 of the Civil Act).

165. The Government is currently investigating whether human rights violations occurred during the intercountry adoption of children in the past (1970s–1980s). The Government plans to take appropriate measures based on the findings of the investigation. In addition, under the Special Act on Domestic Adoption and the Special Act on Intercountry Adoption, both set to take effect in July 2025, the Government will carry out all adoption procedures in line with the principles of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Government will also be responsible for ensuring the safety and rights of adopted children. Information disclosure regarding adoptees will be handled by public institutions managing adoption records in accordance with these Acts.

International Cooperation in the Search and Identification of Children Subject to Enforced Disappearances

166. The Government may request and respond to international judicial cooperation based on the Convention on the Civil Aspects of International Child Abduction and its implementing legislation, the Act on the Implementation of the Hague Child Abduction Convention.

Legislations and Procedures Prioritizing the Best Interests of the Child in Public Institutions and the Right of the Child to Freely Express Their Vies in All Matters Related to Enforced Disappearances

167. In line with the implementation of the Convention on the Rights of the Child, the Government ensures that the best interests of the child are given top priority in the formulation and execution of all child-related policies. Article 2, paragraph 3 of the Child Welfare Act explicitly states that the best interests of the child must be considered as the best interest of the child in all activities. In this context, the Family Litigation Rules were revised in 2013 to lower the age at which a child's opinion must be heard from 15 to 13 years old when the court ex officio determines matters such as designation of parental authority, child custody, and visitation rights, thereby reinforcing the principle of prioritizing the best interests of the child. In criminal trials related to enforced disappearances, if the victim is under the age of 13, a person who has a trusting relationship with the child may accompany them. If it is determined that the child cannot testify fully when facing the defendant, measures such as video testimony, removal of the defendant from the courtroom or installation of screening facilities are actively implemented. In addition, various protective measures are applied in parallel, including assistance from witness support personnel, closed hearings, and anonymization of the victim's personal information.

168. Furthermore, Article 11-2 of the Child Welfare Act introduced the child policy impact assessment system in 2019, requiring central and local governments to analyze and evaluate the effects of child-related policies on child welfare, with the aim of implementing policies that prioritize the best interests of the child.
