



TRANSITIONAL JUSTICE WORKING GROUP (TJWG)  
CITIZENS' ALLIANCE FOR NORTH KOREAN HUMAN RIGHTS (NKHR)

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**About Contributing Organizations:**

Main Contributing Organization: **Transitional Justice Working Group (TJWG)**

Established after the landmark report of the UN Commission of Inquiry on Human Rights in the DPRK, the TJWG long-term focus is on mapping crimes against humanity in North Korea. The group has published numerous reports and created database system of crimes, including the crimes of enforced disappearance, called Footprints. It has hosted international and domestic workshops, seminars, and an international conferences to raise awareness for and to develop the transitional justice approach for North Korean human rights abuses. 84 Yulgok-ro, Jongno-gu, Seoul 03131, Republic of Korea, <https://en.tjwg.org> / Contact person: Hubert Y. Lee [hubert.lee@tjwg.org](mailto:hubert.lee@tjwg.org) Tel: +82-2-722-1162

**Citizens' Alliance for North Korean Human Rights (NKHR)** is a non-partisan, non-religious and non-profit organization founded in Seoul, ROK in 1996. NKHR's work focuses on international advocacy and research, as well as on the assistance for North Korean refugees and education programs for North Korean youth and college students resettling in South Korea. 131 Tongil-ro, Sodaemun, Seoul 03735, Republic of Korea [www.nkhr.or.kr](http://www.nkhr.or.kr) / Contact person: Jiyeon Lee [j.lee@nkhr.or.kr](mailto:j.lee@nkhr.or.kr) Tel: +82-2-723-1672

**Introduction**

This submission concerns (1) the amendments to the Rome Statute of the International Criminal Court and its domestic implementing legislation and enforcement mechanism; (2) the domestic implementation of the International Convention for the Protection of All Persons from Enforced Disappearance; and (3) the application of the statute of limitations in the adjudication of civil claims for grave human rights violations.

## **1. The amendments to the Rome Statute of the International Criminal Court and its domestic implementing legislation and enforcement mechanism**

In the third cycle UPR (A/HRC/37/15), Japan “Accept[ed] to follow up” or “support[ed]” recommendation 161.27 to ratify the amendments to the Rome Statute of the International Criminal Court on the crime of aggression (the Kampala amendments) (A/HRC/37/15/Add.1, p. 2). However, as of 14 July 2022, Japan has not implemented yet the acceptance/ratification of the amendments on the crime of aggression.

The Assembly of States Parties have also adopted amendments to article 8, paragraph 2 (b) and (e) of the Rome Statute to expand the scope of war crimes in armed conflicts under customary law as well as deletion of article 124 that allows the states parties to defer the acceptance of the ICC’s jurisdiction over war crimes for 7 years.

Japan participated in the adoption of all the amendments in the Kampala Review Conference (2010), the Assembly of States Parties in 2015, 2017 and 2019, but it has not accepted/ratified yet any of the amendments.

Japan’s speedy acceptance/ratification of these amendments would provide greater legal protection for the combatants and civilians in times of war and reduce the risk of fragmented application of the Rome Statute although such development was indeed contemplated by the drafters of the Rome Statute explicitly through Article 121(5) and the State parties did not raise any substantive pushback at that point in 1998.

Japan has not codified the crime of genocide, crimes against humanity, war crimes and the crime of aggression in its domestic law on the ground that the existing penal provisions are sufficient for the punishment of such crimes. However, it is difficult to see how common domestic crimes such as murder can fully encompass the acts that amount to crimes under the jurisdiction of the International Criminal Court (ICC). As some government ministries feared, the ICC may be forced to exercise jurisdiction over the crimes that the Japanese authorities are unable to investigate or prosecute due to the lack of their codification. It is important therefore for Japan to codify these crimes in the national law.

It is also worth remembering that in the third cycle UPR (A/HRC/37/15), Japan noted recommendation 161.26 to ratify the Convention on the Prevention and Punishment of the Crime of Genocide. Japan has not yet ratified/acceded to the Genocide Convention.

For the effective enforcement of the amendments, as well as the existing provisions, it would be advisable to create a dedicated office for the investigation and prosecution of the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Although thousands of Japanese war criminals were prosecuted and convicted by the International Military Tribunal for the Far East and of other Allied War Crimes Courts after World War II and Japan accepted their judgments per article 11 of the 1951 San Francisco Peace Treaty, there have never been trials for such crimes in Japanese courts. Germany's Central Unit for the Fight against War Crimes and further Offences pursuant to the Code of Crimes against International Law (ZBKV: *Zentralstelle für die Bekämpfung von Kriegsverbrechen*), established in 2003 as part of the Federal Criminal Police Office (BKA: *Bundeskriminalamt*), may serve as a good model.

## **2. The domestic implementation of the International Convention for the Protection of All Persons from Enforced Disappearance**

Although Japan ratified the Convention on 23 Jul 2009, it maintained that among acts of enforced disappearance, the act of depriving a person of liberty shall be punished under Article 220 (unlawful capture and confinement) and Articles 224 to 228 (kidnapping, buying or selling of human beings) of the Penal Code, and the act of concealing an act of depriving a person of liberty shall be punished under Article 103 (harboring of criminals) and Article 104 (suppression of evidence), etc., of the Penal Code (CED/C/JPN/1, para. 17).

In other words, Japan took no steps to specifically criminalize enforced disappearance as an autonomous offence in accordance with article 2 of the Convention. The Committee on Enforced Disappearance (CED) in its concluding observation considered that the different criminal offences in the Penal Code of Japan are not sufficient to encompass all the constituent elements and modalities of the crime of enforced disappearance and expressed concern that national legislation does not specifically criminalize enforced disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention (CED/C/JPN/CO/1, para. 13).

The Working Group on Enforced or Involuntary Disappearances (WGEID) has transmitted 13 cases of enforced disappearances to the Democratic People's Republic of Korea (North Korea) concerning 11 Japanese nationals (E/CN.4/2003/70, paras. 85, 154, 247 and 288; E/CN.4/2004/58, para. 168; A/HRC/7/2, para. 185; and A/HRC/22/45, para. 104) and 2 persons of "Chosen-seki" [ethnic Koreans who mostly had migrated to mainland Japan during Japan's colonial occupation of Korea as Japanese nationals but became stateless in 1952 by administrative fiat and refused to acquire the citizenship of the Republic of Korea (South Korea)] (A/HRC/10/9, para. 219).

The WGEID has also transmitted 25 cases of enforced disappearances of Sakhalin Koreans who were taken to Sakhalin as forced laborers during World War II by Imperial Japan but interned by the Soviet occupation force afterwards and lost contact with their family members in the

Republic of Korea with the outbreak of the Korean War in its 121st session (11–15 May 2020) (A/HRC/WGEID/121/1, para. 109) and 122nd session (21–30 September 2020) (A/HRC/WGEID/122/1, paras. 131-132 and Annex I, paras. 9).

Therefore, Japan’s specific criminalization of enforced disappearance as an autonomous crime and as a crime against humanity in accordance with articles 2 and 5 of the Convention respectively may contribute to realizing justice and accountability for these cases.

### **3. The application of the statute of limitations in the adjudication of civil claims for grave human rights violations such as enforced disappearance**

The Japanese judiciary has applied the 20-year statute of limitations under article 724 of the Civil Code even in cases concerning grave human rights violations such as enforced disappearance, most notably in the judgment of the Tokyo District Court of 23 March 2022 in the civil suit brought by five “returnees” against the DPRK (North Korea) (Heisei 30 (Wa) No. 26750 [平成30年 (ワ) 第26750号]).

From 1959 to 1984, a total of 93,340 ethnic Koreans in Japan who had migrated to Japan or were conscripted as soldiers/forced laborers during the colonial period “returned” to the Democratic People’s Republic of Korea (North Korea) as a result of the “Paradise on Earth” or “Return to Paradise” propaganda campaign as described by the UN Commission of Inquiry on human rights in the DPRK (A/HRC/25/CRP.1, paras. 916-923). Some of them, forcibly disappeared for decades by the North Korean government, managed to escape North Korea and return to Japan since the 1990s.

In August 2018, five of these “returnees” in Japan, led by Kawasaki Eiko (川崎栄子), filed a lawsuit against the DPRK seeking 100 million yen (900,000 USD) each as solatium for (1) the state abduction and (2) denial of family contact by the DPRK. On 23 March 2022, the Tokyo District Court, a court of first instance, held that it had territorial jurisdiction for only the solicitation (勧誘行為) of the “returnees” before leaving Japan and not for their detention (留置行為) in North Korea or North Korea’s denial of family contact. While the court added that the DPRK cannot enjoy jurisdictional immunity (sovereign immunity) because it is not a state recognized by Japan, it concluded that the claim for the solicitation before leaving Japan was time-barred by the 20-year statute of limitations under article 724 of the Civil Code. In the court’s view, while the five plaintiffs had no access to legal remedies during the decades in North Korea, they were not justified in waiting 13-17 years before bringing the suit following their escape to Japan.

The 23 March judgment is problematic for two reasons. As discussed above, Japan’s failure to codify enforced disappearance as a continuous crime in line with the International Convention for the Protection of All Persons from Enforced Disappearance resulted in the court’s separation

of “solicitation” in Japan and “detention” in North Korea instead of interpreting the state abduction as a continuous crime of enforced disappearance. Had enforced disappearance been properly codified, the statute of limitations would run from their escape from North Korea to Japan.

Moreover, the court’s expectation that the five plaintiffs who had spent decades of their life in untold isolation and misery in North Korea could and should have sued the DPRK before the passage of 13-17 years does not appear to take into account the special nature of enforced disappearance. The court should have recognized exceptions to the 20-year filing deadline given the gravity of their human rights violations.

The court also ignored the fact that the General Association of Korean Residents in Japan (*Chongryon* or *Chosen Soren*), which functions as an extended arm of the North Korean government and as such coordinated the “Return to Paradise” campaign, continues to deter the “returnees” who escaped to Japan from pursuing justice by posing a threat to them and their remaining family members in North Korea.

In addition, the statute of limitations must be tolled until Japan conducts a fact-finding inquiry into the credible allegations, backed by documents and testimonies, that the actual operation of the “Return to Paradise” campaign in Japan did not fulfil the international standards due to *Chongryon*’s employment of deception, misinformation, coercion and false paperwork, made possible by the lack of proper monitoring by the International Commission of the Red Cross (ICRC) and the Japanese Red Cross that were supposed to oversee the relocation. This ultimately enabled and resulted in enforced disappearance and other crimes against humanity committed against the “returnees” in North Korea.<sup>1</sup>

Moreover, Japan should also ratify/accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity since it has ratified the Rome Statute of the International Criminal Court but failed to codify its provisions, including the non-applicability of statute of limitations in article 29, in the domestic law.

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<sup>1</sup> For more information, see “What Happened to Ethnic Koreans Displaced from Japan to North Korea?”, Citizens’ Alliance for North Korean Human Rights, Seoul, November 2020