

## WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

### South Korea

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### GENERAL OVERVIEW

#### 1. Political System.

Korea is a centralized nation-state with a tripartite system of government consisting of administration, legislation and judicature. There are no localized criminal justice systems and thus the entire criminal justice system, such as prosecution, courts and prisons, is the responsibility of the central government. But since Korea is still a divided nation, there exists the Democratic People's Republic of Korea (DPRK : North Korea) in the northern part of the Korean Peninsula.

#### 2. Legal System.

Korea has adopted much of the Continental or Civil Legal System. Explicitly written legal codes, including constitutional law, have been effected in all the relevant areas conceivable. Thus, in all legal problems, written rules of law are the primary sources of reference.

The Criminal Law consists of a general part and a special part. The general part deals with the scope and application of the law. The various types of justification, excuse, insanity defense, accountability, failed attempt, co-offender, and the types of punishment prescribed are in the general part of the law. The special part encompasses the various types of crime that are proscribed. In addition, a multitude of special criminal acts, such as Drug Laws, Laws for Additional Punishment for Special Economic Crimes, and Laws for Punishment of Misdemeanors, are also prescribed for additional punishment of certain types of crime or for punishment of certain types of crime not specified in criminal law.

The Criminal Procedure Law takes an explicitly prescribed form, based on an accusatorial system. The basic structure of criminal procedure takes on the nature of both an inquisitorial and adversarial system. This is

primarily due to the nature of Korean criminal procedure, which is a merger of American and German criminal procedures.

The legal culture in Korea often takes on a traditional nature. People are not used to resolving conflicts through the court. Rather, an informal resolution, such as coordination or conciliation, more often provides justice.

### 3. History of the Criminal Justice System.

Korea has a long history. Established in 2333 B.C., the oldest form of the government on the Korean Peninsula, Kochosun, had eight Laws of Prohibition. Since then various states have appeared in this area. In around the 1st century B.C., three dominant ancient dynasties--Koguryo, Paekjae, and Shilla--came into being with their own legal systems. In the middle of the 7th century A.D., Shilla unified all these states into one and developed its own written Criminal Law.

Following the fall of Unified Shilla, a new dynasty called Koryo was established in the 9th century. (The modern name of Korea originated from this Koryo.). Koryo developed its own legal system, based on that of the Tang-dynasty of ancient China. After the demise of Koryo, the newly established Chosun dynasty tried to incorporate elements of the Ming dynasty's legal system, but found them inappropriate. This eventually brought the need to enact a new legal system, and finally saw the enactment of the Great Law for the Nation or Kyungkookdaejon in 1471. Since then many revisions have been enacted.

The first modern criminal law was the Great Criminal Law enacted in 1905. But due to the Japanese colonization of Korea in 1910, the Great Criminal Law was abolished and replaced by Japanese Criminal Law in 1911. After World War II, following the defeat of Japan and the ensuing commencement of American military administration, more genuine efforts have been made to propagate Korean Legal Codes. This brought the contemporary Criminal Law of 1953 and the Criminal Procedure Law of 1954 that have since been in effect. The criminal law of 1953 has undergone broad revision and there are plans to substantially revise the criminal procedure law.

## CRIME

### 1. Classification of Crimes.

\*Legal classification. According to the criminal legal system in Korea, there is a distinction between criminal offenses and non-criminal offenses. Criminal offenses, patterns of behavior defined as crime in the criminal law, are further

classified into: 1) crimes breaching a national interest (such as crime of rebellion), 2) crimes breaching a social interest (such as sedition or arson), and 3) crimes breaching personal interests (for instance, murder). Offenses that are not proscribed in the criminal law but are defined as criminal in other laws include tax-related crimes and drug-related crimes.

There is also a distinction between serious offenses and less serious offenses. Criminal offenses subject to jail or minor fines are called less-serious offenses and separate laws designated for these less-serious offenses exist. Violations that are subject to more severe punishment than the above are called serious offenses.

There is a generic distinction between crimes of a violent nature and property-related crimes. For each of them special laws prescribing additional punishment exist depending upon the particular type of crime. Property crimes in Korea refer to crimes violating property interests. They include crimes of theft, fraud, embezzlement, breach of trust, and damage. Violent crimes include injury, assault & battery, and rape.

\*Age of criminal responsibility. The age of criminal responsibility is 14. Persons of age 14 through age 20 are specially treated under the Juvenile Law. For juveniles, an indeterminate sentence is applied, with less than 10 years for a longer term and less than 5 years for a shorter term. For those under age 18, capital punishment and life imprisonment are not allowed.

\*Drug offenses. There are three major drug offense acts in Korea: 1) the Narcotics Act for regulating raw opium and opium poppy, cocaine, and heroin; 2) the Cannabis Control Act for regulating marijuana; and 3) the Psychotropic Substances Control Act for regulating methamphetamine, its derivatives and acid-ephedrine. In general it is a crime to sell, produce, cultivate, manufacture, smuggle, possess, or use the substances or materials listed above and to be involved in behaviors violating the above Acts.

## 2. Crime Statistics.

These are all legal definitions coming from the criminal code; the statistical compilation is by the Supreme Public Prosecutors Office and includes police statistics. The following data were compiled by the Supreme Public Prosecutor's Office for the years 1992 and 1993.

\*Murder. The rate for murder in 1992 was 1.4 per 100,000 population.

\*Rape. The rate for rape in 1992 was 12.5 per 100,000.

\*Theft. The rate for theft in 1992 was 176.6 per 100,000.

\*Drug offenses. For the year 1993, 3,364 offenders were arrested for violating the Narcotics Act, 1,509 offenders for the Cannabis Control Act, and 1,900 for the Psychotropic Substances Control Act.

\*Crime regions. No information available.

## VICTIMS

### 1. Groups Most Victimized by Crime.

In February 1991, a city survey in the Seoul Metropolitan area was conducted, seeking victimization experiences during the year 1990. According to the survey males, particularly younger males, tended to be more likely to be victimized by violent crimes. The extent of household victimization was determined by the type of house and the presence of gatekeepers. (Korean Institute of Criminology, 1993).

### 2. Victims' Assistance Agencies.

The exact number is not available, but across the country many kinds of victim assistance programs and organizations have been emerging such as rape counseling centers and shelters. Most of these programs are privately administered.

### 3. Role of Victim in Prosecution and Sentencing.

There are certain types of crime where the victim's request for an indictment or cancellation of an indictment have a determining influence on whether the prosecutor proceeds. The victim's right to make statements on the fact and result of victimization and to present his/her opinion in the sentencing process is constitutionally prescribed. This may be viewed as similar to a victim impact statement.

### 4. Victims' Rights Legislation.

There are a number of victims' rights prescribed in the law such as a victim's right to request restitution under the Crime Victim Aid Law, the right to request an indictment for certain types of crime, and the right to request reconsideration of the decision not to indict in specified types of crime.

## POLICE

### 1. Administration

The Korean police system consists of, from the top: one National Police Headquarters located in Seoul; 5 special task police agencies, including Marine Police; 13 provincial police headquarters; 220 police stations; and 3,389 police branch offices across the country. The Korean Police has its own chain of command independent of the Army. There are no local municipal police systems or state police departments like those in many western nations.

## 2. Resources.

\*Expenditures. Annual expenditure on policing in 1994 was 609.5 billion Won (which is roughly equivalent to 760 million U.S. dollars).

\*Number of police. As of 1993, there were 90,108 police officers. In addition, there are some 23,325 riot police and 32,838 temporary-service police who substitute police service for military service. These temporaries help and support the regular policemen.

## 3. Technology.

\*Availability of police automobiles. As of 1993, there were 7,703 police automobiles, including; 4,891 police cars, 1,685 police pick-ups, 765 police trucks, and 865 special-mission vehicles. There were also 9,181 police motorcycles.

\*Electronic equipment. A wide variety of electronic equipment is used, including facsimile machines and many types of radio communication systems. To ensure effective and prompt response to citizen's urgent calls, there are many computer systems for reception, processing and dispatching of information. In several metropolitan areas throughout the country, Automatic Vehicle Number Identification systems have been employed. There has also been experimental use of Automatic Vehicle Location Systems and Mobile Data Terminals with the hope of their adoption in the near future.

\*Weapons. Several types of weapons are used, but only under very limited circumstances. Bullet proof vests are rarely used and usually only by members of special task force teams such as an anti-terrorist force.

## 4. Training and Qualifications.

Depending on the type and nature of education program, the amount of time required for training varies. But in general, 4 years of training for students of the National Police College, 1

additional year for candidates for executive positions, 24 weeks for new recruits, 12 weeks for marine police, and 4 weeks for riot police and temporary-service police are required.

Depending on the kind of training needed, police training is available at several institutions: The National Police College, Police Administration School, Central Police School, Training Institute for Police Investigation, and the Training Institute for Security Personnel.

Except in the case of the National Police College, there is no particular educational background required for new recruits. Anyone with a healthy mind and body can be appointed as a new recruit after passing the specified examination and completing the education program.

## 5. Discretion

\*Use of force. The police may use force only to the extent necessary and after a reasonable judgment of the situation where: 1) there is probable cause to believe that it is necessary to arrest a suspect who has committed a crime subject to capital punishment, life imprisonment, or more than 3 years of imprisonment or confinement, 2) to prevent escape, 3) to protect the life and body of the officer or other persons, and 4) to deter any protest against official routine police work.

Police may use weapons under the same circumstances that they may use any other force. Police in Korea usually carry only batons but may carry guns as well.

\*Stop/apprehend a suspect. Upon observing suspicious behavior or after a reasonable judgment of the situation, police may stop a suspect when there is probable cause to believe that he/she has committed or is about to commit a crime. Police may apprehend a suspect when there is probable cause to believe that he/she committed a crime and 1) when he/she has no permanent residence, or 2) when the officer is afraid that evidence may be destroyed, or 3) when the officer is afraid that he/she may flee.

In accordance with the laws concerning less-serious offenses, police may release suspects on their own recognizance when the offense is subject to temporary detention or fine.

\*Decision to arrest. Police may arrest a suspect only after obtaining a warrant except in the case of an urgent arrest or the arrest of the suspects on the scene.

In general, the police make a decision to arrest after the necessary investigation and interrogation. Once a decision not to arrest is

made, the suspect should be released immediately. When the police decide to arrest, they should complete the investigation and forward to the prosecutor the investigation records and relevant evidence within 10 days.

\*Search and seizure. Police may search or seize when the evidence or materials subject to forfeiture are believed to be significantly related to the crime under suspicion and when they are essential to the investigation.

\*Confessions. For confessions made in front of police to be used as evidence of guilt, there must be a showing of (1) the voluntary nature of the confession, (2) that due process was followed in obtaining the confession, (3) the establishment of the truth of the documents, (4) the reliability of the confession, and (5) existence of supporting evidence.

#### 6. Accountability.

For those who have a complaint against a police disposition or decision, opportunities are provided for legitimately raising objections. For example, requests for reinvestigation of the case under question or for solution through regular trial are available.

### PROSECUTORIAL AND JUDICIAL PROCESS

#### 1. Rights of the Accused.

\*Rights of the accused at trial. There are many rights of the accused, such as the right to counsel of either a private attorney or public defender, the right to bail, the right to request preservation of the evidence, the right to confess or avoid confession, the right to avoid a particular judge, the right to request investigation of the evidence, the right to make a final oral statement, the right to trial by a judicial panel, and the right to appeal.

\*Assistance to the accused. Private attorneys are usually preferred for the defense. For those who cannot afford to hire private attorneys, state-appointed counsel programs are available. The right to state-appointed counsel is allowed in only very limited circumstances. Those exceptional situations may be when the suspect applies for review of the appropriateness of apprehension and when he/she is a juvenile, is over 70 years old, is a deaf-mute, is believed to be physically or mentally handicapped, or cannot afford to hire an attorney due to poverty or other reasons. Other criteria concerning the level of

income, type of occupation, or welfare status also apply to eligibility.

## 2. Procedures.

\*Preparatory procedures for bringing a suspect to trial. The most important procedure before the trial process begins is the investigation. The initial investigation is done by the police under the direction of the prosecutors. Based on the result of this investigation, the prosecutor determines whether to indict.

There are no preliminary hearings or juries in Korea. The cases which have been investigated are either indicted, suspended, or not indicted. The decision to indict, suspend indictment, or not to indict is made by a prosecutor who is generally supervised by the Supreme Public Prosecutor through the organizational chain of command.

\*Official who conducts prosecution. The prosecution of the accused is conducted by a prosecutor who belongs to the Ministry of Justice and is appointed by the government.

\*Alternatives to trial. For most juvenile cases, other kinds of protective or rehabilitative dispositions are considered rather than criminal sanctions. There is no supervised or unsupervised treatment available at this stage. For juvenile cases, classification of the cases by the Juvenile Classification Center or a judge's discretionary disposition is also available.

\*Proportion of prosecuted cases going to trial. For the year 1992, 8.1% of all prosecuted persons (1,579,797) went to trial: of these persons, 14.7% had violated criminal laws; 7.4% had violated special laws.

\*Pre-trial incarceration conditions. Based on the principle of presumption of innocence, deprivation of the liberty of the accused is strictly limited. There are only three conditions where incarceration before or awaiting trial can be allowed under the Criminal Procedure Law. This can occur 1) when there is probable cause to believe that the accused committed a crime or 2) when there is no permanent residence of the accused or 3) when elimination of evidence or flight by the accused is probably imminent.

\*Bail procedure. The procedures for the accused or defendant to be free from incarceration are: 1) for the accused, application to the court for review of the appropriateness of the pre-trial incarceration, 2) for the defendant, application

for bail procedure, and 3) for both the accused and defendant, application limiting the duration of incarceration.

There are two kinds of bail programs in Korea: bail on application and bail ex officio. In the former case, bail could be allowed upon the defendant's application with some limitations. In the latter case bail could be allowed by the court ex officio or upon application of the defendant.

\*Proportion of pre-trial offenders incarcerated.  
No information available.

#### JUDICIAL SYSTEM

1. Administration. The hierarchy of courts and appellate processes can be described in the following diagram.

##### Hierarchy of Courts

Supreme Court	Appellate Jurisdiction Only Petit Benches (3) or Grand Bench
High Court	Appellate Jurisdiction Collegiate Court (3 Judges)
District Court & Family Court	Appellate Jurisdiction Collegiate Court (3 Judges) Single-Judge Court Collegiate Court (3 Judges)

#### 2. Judges.

\*Number of judges. As of Nov. 11, 1993, the total number of judges was 1,130. This breaks down into one Chief Justice and 13 other Justices in the Supreme Court, 251 judges in the 5 Higher Courts, and 865 judges in the 13 District Courts across the country. There are 46 female judges. All these judges are Korean.

\*Appointment and qualifications. The Chief Justice of the Supreme Court is appointed by the President with the consent of the Congress. The other Supreme Court Justices are appointed by the President upon recommendation of the Chief Justice with the consent of the Congress. Other judges are generally appointed by the Chief Justice of the Supreme Court.

To become judges, candidates must pass the National Judiciary Examination and then complete a 2-year judicial training course.

3. Special Courts. There is only one family court, located in Seoul. It is basically equivalent to the District Court and mainly deals with family-related cases and juvenile cases. In other areas the District Courts also perform the role of

the family court.

The Constitution of Korea stipulates a establishment of the Military Court as a sole special court. The highest appellate court for the military court is the Supreme Court.

## PENALTIES AND SENTENCING

### 1. Sentencing Process.

\*Who determines the sentence? The judges determine the sentence of the convicted.

\*Is there a special sentencing hearing? The procedures for fact-finding and sentencing are not separated. Despite a strong prevailing opinion in favor of separation it has not yet been institutionalized.

\*Which persons have input into the sentencing process? There is no investigation by the court before sentencing adult offenders. For juveniles, judges may order the investigating officer belonging to the court to conduct an investigation and also listen to psychiatrists, psychologists, social workers, education specialists and other professionals when necessary.

### 2. Types of Penalties.

\*Range of penalties. There are nine types of criminal penalties: capital punishment, imprisonment, penal servitude, revocation of qualification, suspension of qualification, fines, jails, minor fines, and forfeiture.

The most frequently used type of punishment is a fine followed by imprisonment and penal servitude. Fines are typically imposed for less serious offenses.

\*Death penalty. Capital punishment is imposed for 16 types of crimes, including murder cases, crimes of seduction and crimes of insurrection. In the draft of the revised criminal law, the scope of capital punishment is set to be reduced. In reality, those who are sentenced and subject to execution are typically murderers and serious rapists committing robbery simultaneously.

The methods of execution are hanging and firing squad. The latter is prescribed only in the military criminal law.

## PRISON

### 1. Description

\*Number and type of prisons. There are a total of

39 correctional facilities: 26 prisons, 2 juvenile prisons, 1 women's prison, 1 open prison, 5 detention houses, 2 social protection houses, 1 branch prison and 1 branch detention house (Correction Bureau, 1993).

\*Number of prison beds. In Korea, beds in prison are not typical.

\*Average daily/number of prisoners. For the year 1992, the daily average population was 55,159, which included 31,169 convicted prisoners and some 219 others under penal servitude. At the end of 1992, male prisoners were 97.2% and females 2.8% of the total. Only 0.3% of the prison population were of foreign origin. (White Paper on Crime, 1993)

\*Number of annual admissions. For the year 1992, the number of admissions was 27,799 persons (Correction Bureau, various years).

\*Actual or estimated proportions of inmates incarcerated. The detailed breakdown of actual proportions of inmates incarcerated by crime type, annual admissions or daily average is not readily available. However, among 31,499 prisoners in 1992 the highest proportion (23.6%) were serving time for theft, the next highest for robbery (17.1%). The third highest group were those violating the Special Laws Concerning the Punishment of Violent Behaviors, (12.8%).

## 2. Administration.

\*Administration. All the prisons are centrally administered and controlled by the Director-General of the Correction Bureau under the Minister of Justice.

\*Prison guards. As of December 31, 1992, there were 10,515 correctional staff personnel. This provides for an inmate to staff ratio of about 1 to 5. Almost all of staff members are Korean and male.

\*Training and qualifications. Correctional officials are appointed according to the procedure for new employment, promotion and transfer prescribed in the State Civil Service Law and its Decree. The guards at the lowest level are appointed through open competitive examinations prescribed in the State Civil Service Appointment Ordinance and its Enforcement Decree.

For newly appointed correctional officials, both general training programs and the on-the-job training are provided by the Ministry of Justice,

which usually takes 6 to 20 weeks.

\*Expenditure on the prison system. The correctional administration budget for FY 1993 amounted to a total of some 276 billion Won (approximately equivalent to 337 million dollars) (Correction Bureau, 1993).

\*Number of prisoners awaiting trial. As of December 1992, about 21,700 prisoners were awaiting trial.

### 3. Prison Conditions.

\*Remissions. Good behavior is rewarded in many ways. Release on parole is a good example. In general those who are eligible for parole release are convicted prisoners who have shown clear signs of rehabilitation and have passed one third of the sentenced term with good behavior.

Parole is extensively granted to vocational trainees whose employment has been assured and those who have obtained qualified certification as skilled workers and winners of skill contests.

General parole is granted each month and the number of those released on parole has increased. In the past, special parole and some remissions were granted twice a year on National Liberation Day and Christmas Day. The frequency of special parole has increased to five times a year on Independence Movement Day, Buddha's Birthday, National Liberation Day, National Foundation Day and Christmas Day.

\*Work/education. Depending on the type of punishment, many inmates are required to work, attend classes and do other things. But not all inmates are required to do so.

\*Amenities/privileges. Inmates may take many kinds of correctional education programs, such as living guidance education, moral training, and academic education programs. The prison terms are divided into several phases to gradually allow improved treatment, depending on the degree of the inmate's determination for self-improvement. Thus, following the notion of progressive treatment, inmates are expected to earn responsible credit points which may determine the level of various standards of progressive treatment for each inmate. In particular, to promote return to society, those who are eligible by relevant criteria are provided many kinds of privileges, such as treatment in open facilities, work release programs, furloughs for certain periods, and study tours in society.

## EXTRADITION AND TREATIES

\*Extradition. Since the enactment of the Extradition Law on Aug. 5, 1988, criminals or suspects who are under investigation or undergoing trial for crimes subject to extradition may be extradited to or from other countries.

Korea has extradition treaties with Australia and the Philippines. However, countries that have no treaty with Korea may extradite when a mutual guarantee is secured.

\*Exchange of prisoners. It is not legally possible to transfer prisoners either as a means of domestic enforcement of foreign trial or as foreign enforcement of domestic trial.

\*Specific conditions. There are several conditions which specify the type of crimes, possible reasons for denial, and exceptional cases.

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\*(Author's name withheld by request)