



Korean Privacy

Innovations and Internationalization

John Leitner
DLA Piper LLP

What is meant by “Privacy”?

- ▶ Frequently assessed in terms of public and private dimensions
- ▶ Alternate approach: privacy is personal, yet defined by the acts of third parties:
 - ▶ Privacy in three dimensions: collection, processing, and sharing of personal information; autonomy over personal decisions and actions; government surveillance
 - ▶ Commercialization vs. surveillance/collection
 - ▶ Autonomy vs. exclusion
- ▶ Privacy’s first principles
 - ▶ What creates value?
 - ▶ What captures value for individuals, and the public?
 - ▶ Genuine question of sound democratic culture: isn’t information a public good, and isn’t more information an asset for a democracy?

In what sense is privacy “Public International Law”?

- ▶ Social values manifested in differing approaches to privacy. Individual control over information, bureaucratically determined privacy practices.
- ▶ Customized solutions to facilitate commerce.
- ▶ Are all modern privacy problems also international issues?
- ▶ Technology and information economy practices are moving targets; continuity must come from political values.
 - ▶ *The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual.*
 - ▶ *Of all the hard things to bear, to be cut by your neighbors and left in contemptuous solitude is maybe the hardest.*

Korean Privacy: Background and Context

- ▶ Active legal/regulatory approach to privacy law issues.
- ▶ Policy objective to actively influence Internet and information culture.
- ▶ Problematic side: Name verification.
 - ▶ Officially, at least, about online civic culture, not national security
 - ▶ Unique in scope and in extent of implementation
 - ▶ Mostly ineffective, unconstitutional as-implemented; but also a harbinger of an explicitly post-anonymous Internet
- ▶ (Arguably) positive side: Personal Information Protection Act.

Personal Information Protection: Distinctive Approach, Familiar Challenges

- ▶ Honoring the privacy preferences of each individual
- ▶ Creating a culture of transparency and accountability
- ▶ Korea as personal consent and control advocate; empowering the judiciary
 - ▶ Ensure individual agency over personal information, bring transparency to data collection practices, and empower regulators and the courts to hold collectors and users of personal information accountable for any violations of PIPA's detailed requirements
- ▶ Does consent work? *Homeplus*.
 - ▶ Domestic courts as fulcrum point
- ▶ Inevitable tension: BigData; AI
- ▶ Weighing the public interest; can personal rights be placed on the scale?

Korean situation: Looking forward

- ▶ Continue to balance personal protections with other interests
 - ▶ Rise of civil liberties jurisprudence changes (if not transcends) the “calculus”
- ▶ Government surveillance and online culture
- ▶ Era of mistrust: can institutional intermediaries (public or private, architectural or consequential) provide credibility?
- ▶ Building on PIPA: “Creative Commons” of privacy law.
- ▶ Common ground for privacy advocates and commercial concerns? Unified regulatory structure

Korean situation: Looking abroad

- ▶ Korea-EU: Shared values? Compatible regulatory structures?
- ▶ Korea-U.S.: Security relationship; CLOUD Act
 - ▶ Protection for nationals
 - ▶ Reciprocal law enforcement benefits?
- ▶ Globalizing the Big Data economy
- ▶ Privacy rights as human rights: Korea's leadership role in Asia

Conclusion:

Korea's enlightened self-interest

- ▶ Framing future debates:
 - ▶ Moving from domestic to transnational (E-commerce, law enforcement)
 - ▶ Moving from transnational to international
- ▶ An intensely personal collective action problem:
 - ▶ Greater international law process highly likely
 - ▶ Future debates must be simultaneously informed by perspectives on individual rights and economic and security-driven policy considerations
- ▶ Korea's active regulatory approach provides insight and a path forward

Places We Fear, Places We Dream

Obligations of the United States and South Korea to
Adoptee-Deportees

Daniel A. Edelson

April 23, 2018

Seoul, South Korea

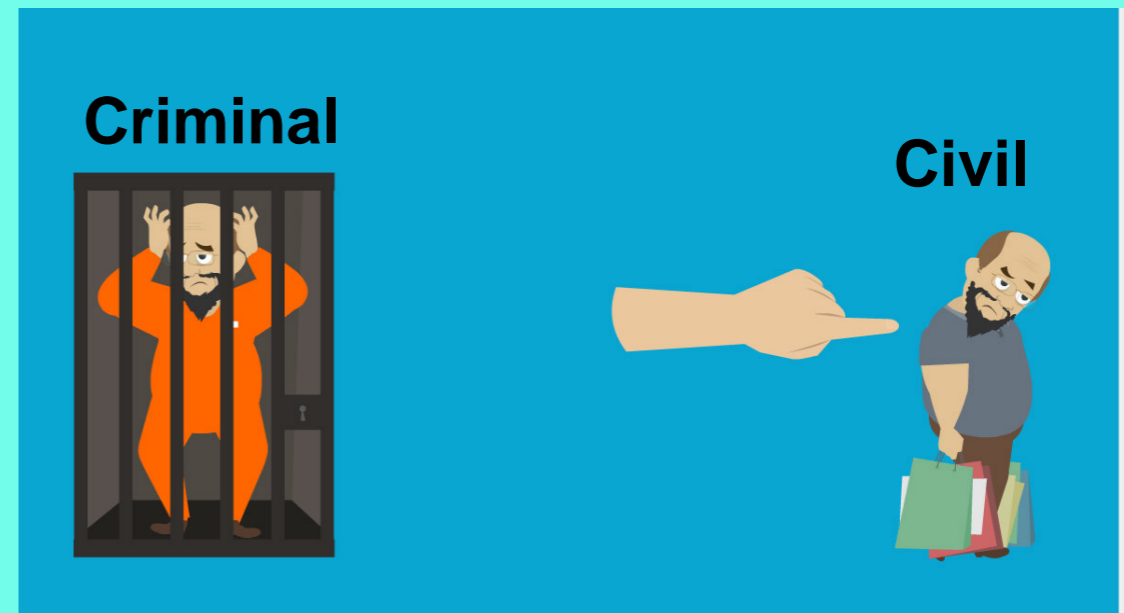
“There are places we fear, places we dream, places whose exiles we became and never learned it until, sometimes, too late.”

–Thomas Pynchon

Deportation of those Convicted of a Criminal Offense is Treated as a Civil Proceeding

Deportation is not punishment but “simply a refusal by the government to harbor persons whom it does not want.”

Bugajewitz v. Adams, 228 U.S. 585, 591 (1913)



Limited Constitutional Protection for Deportees



**Eight Amendment Prohibition against
“Cruel and Unusual Punishment”**

X

**Fifth Amendment Prohibition against
“Double Jeopardy”**

X

“inapplicable...”

“deportation is purely civil....”

Grounds to Protect Deportees Under International Law:

Balancing Right to a Family Against the State's Interest in Public Order

- American Declaration of the Rights and Duties of Man, Articles V - VII
- European Convention on Human Rights, Article VIII



“...the legitimate aim pursued has to be weighed against the seriousness of the interference with the applicants' right to respect for their family life.”

-Berrehab v. Netherlands, Judgment of June 21, 1988, No. 10730/84, para. 29.

Rights to Due Process and Fair Trials

- Protected under US and international law
- Article 14, ICCPR
- Article 13 of the ICCPR provides for fair procedures before expelling aliens
- Article 6, European Convention on Human Rights
- Article 8, American Convention on Human Rights



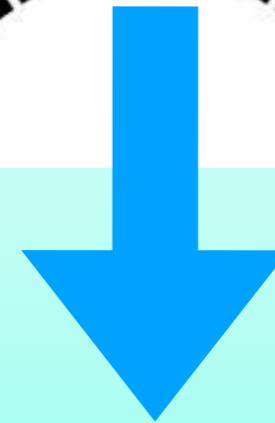
Right to Citizenship

- Article 15, Universal Declaration of Human Rights
- Article 20, American Convention on Human Rights
- Article 7, UN Convention on the Rights of the Child provides for a right to nationality

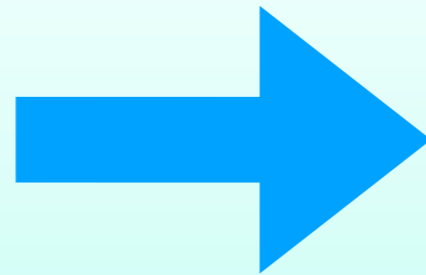
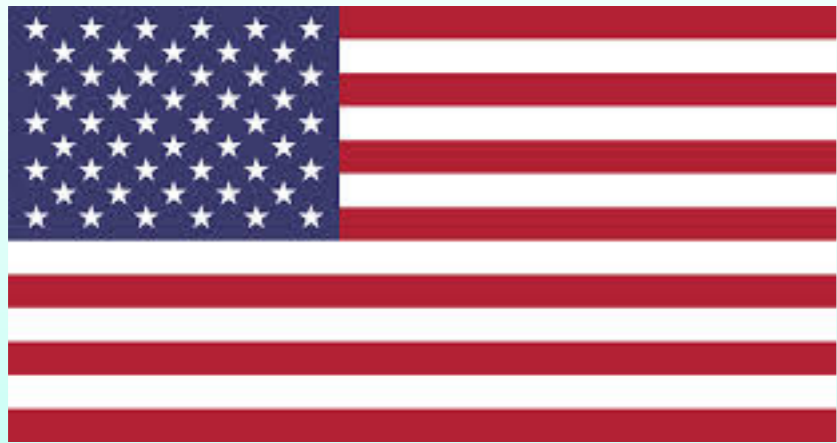


IR 4 Visas

- Thousands of adoptees entered the United States but not all were automatically made citizens
- Some applied for citizenship
- Some did not



Adoptees Face Deportation



- Adoptees often do not know they lack US citizenship
- “Returned” to a country with which they are not familiar

Child Citizenship Act



- Adoptees (and other children with a parent who is a US citizen) under the age of 18 automatically becomes a US citizen
- But does not apply to those who are already 18

Child Citizenship Act



- Effective February 27, 2001
- Adoptees (and other children with a parent who is a US citizen) under the age of 18 automatically become US citizens
- But does not apply to those who were already 18 as of the effective date

Adoptee Citizenship Act of 2018



- Intended to close the loophole of the Child Citizenship Act
- Requires criminal background checks to ensure no unresolved criminal activity
- Would not grant citizenship to adoptees who were deported after being found guilty of crimes involving the use, attempted use, or threatened use of physical force

South Korean Response



- High profile cases have generated attention
- Much of the work to receive deportees appears to be assigned to Korea Adoption Services (KAS)
- Does KAS have the ability to meaningfully assist deportees?

Obligations to Deportees

- Adoptees are not at fault for “failing” to apply for citizenship
- Arguably, both South Korea and the United States failed to properly advise adoptees of risks they faced
- Deportation in this context is punitive and unfair to those expelled and their families
- Both countries should recognize post-deportation rights of the affected persons
- Until the situation is resolved, the United States and South Korea should cooperate to insure that English speaking, properly trained staff assist deportees so that they can adjust to South Korea
- This may provide South Korea with an opportunity to revisit the issue of international adoption
- And may provide South Korea with an opportunity to take the lead on insuring fair procedures for aliens facing expulsion

Climate Change and Transition of Energy Law in Korea



2018. 4. 23.

Hyeong Jun HWANG



CONTENTS

- I. Environment, Climate Change, and Energy**
- II. Climate Change Law & Policy of Korea**
- III. Energy Law & Policy of Korea**
- IV. Implication of Energy Transition in Korea**

I. Environment, Climate Change, and Energy

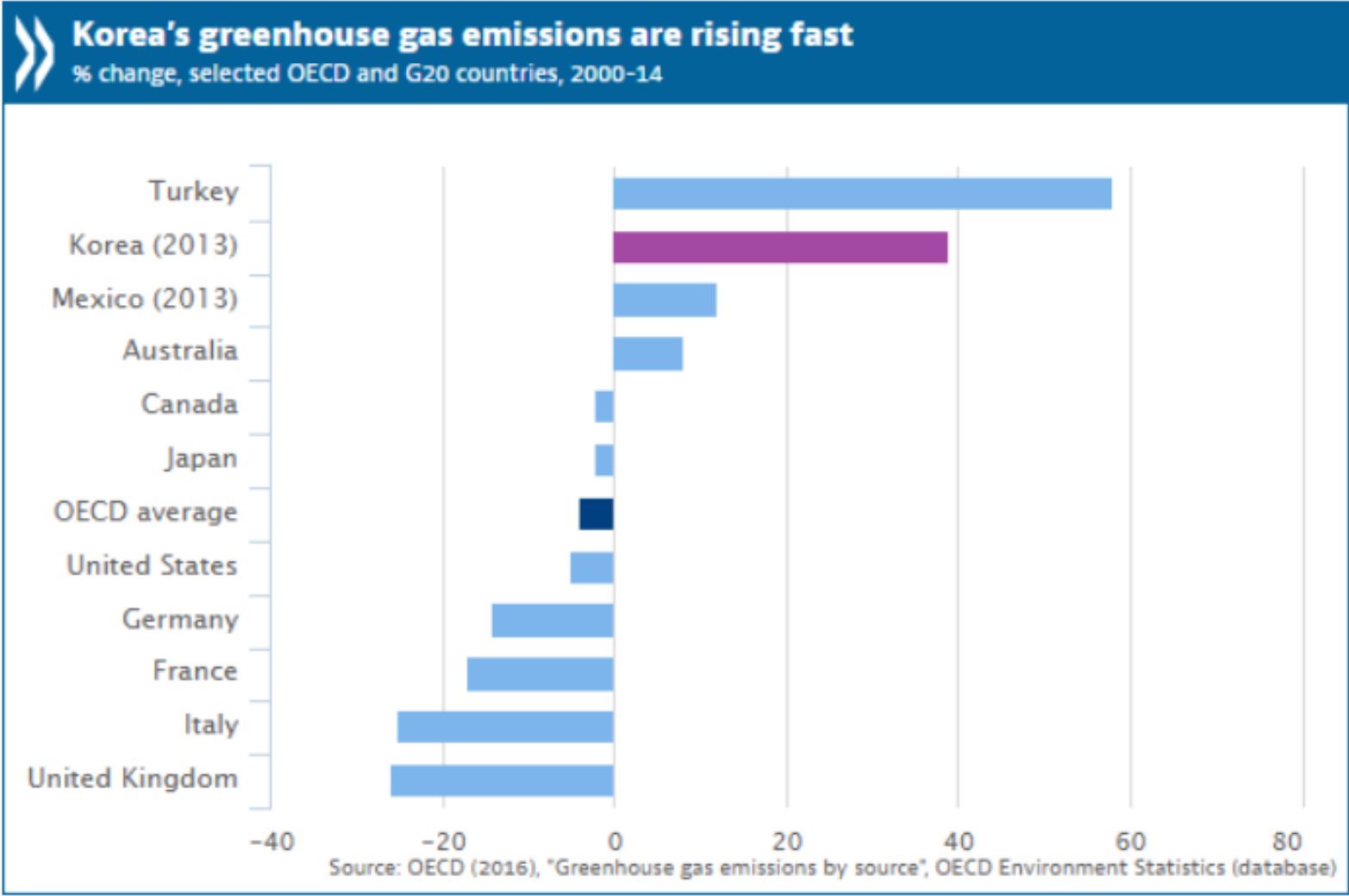
Influence of Energy to Climate Change

- Increase in fossil fuel combustion → Increase in CO₂ and other GHG emissions
- Main source of carbon emissions: electricity generation, transportation, and industrial activities.

Influence of Climate Change to Energy Law and Policy

- Energy Efficiency Standards
- Renewable Portfolio Standards (RPS) / Feed-in Tariffs (FIT)
- Low carbon fuel standards

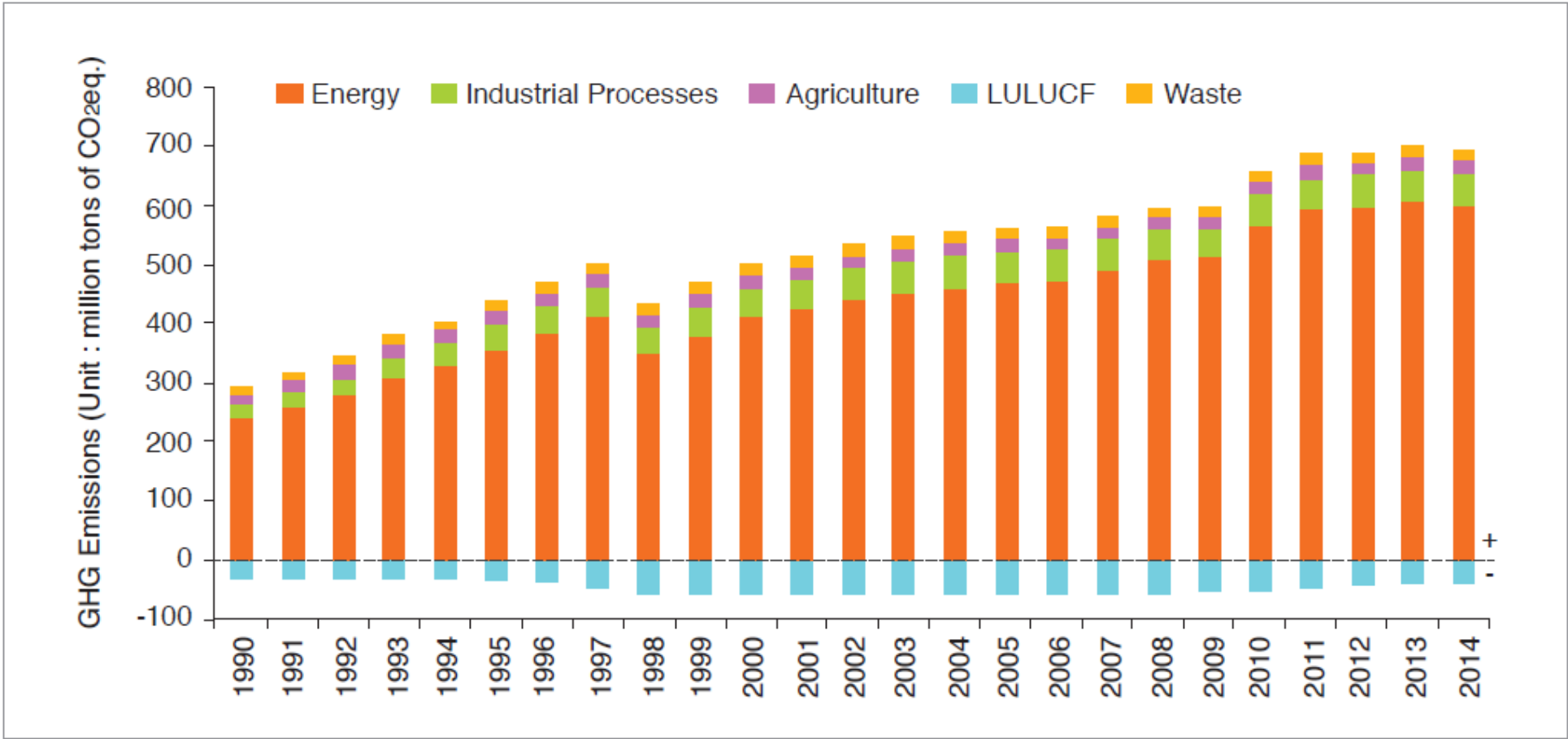
II. Climate Change Law & Policy of Korea



Source: <http://www.oecd.org/environment/korea-needs-to-put-green-growth-vision-into-action.htm>

II. Climate Change Law & Policy of Korea

[Figure 2.2] Trends in National Greenhouse Gas Emissions and Removals (1990-2014)

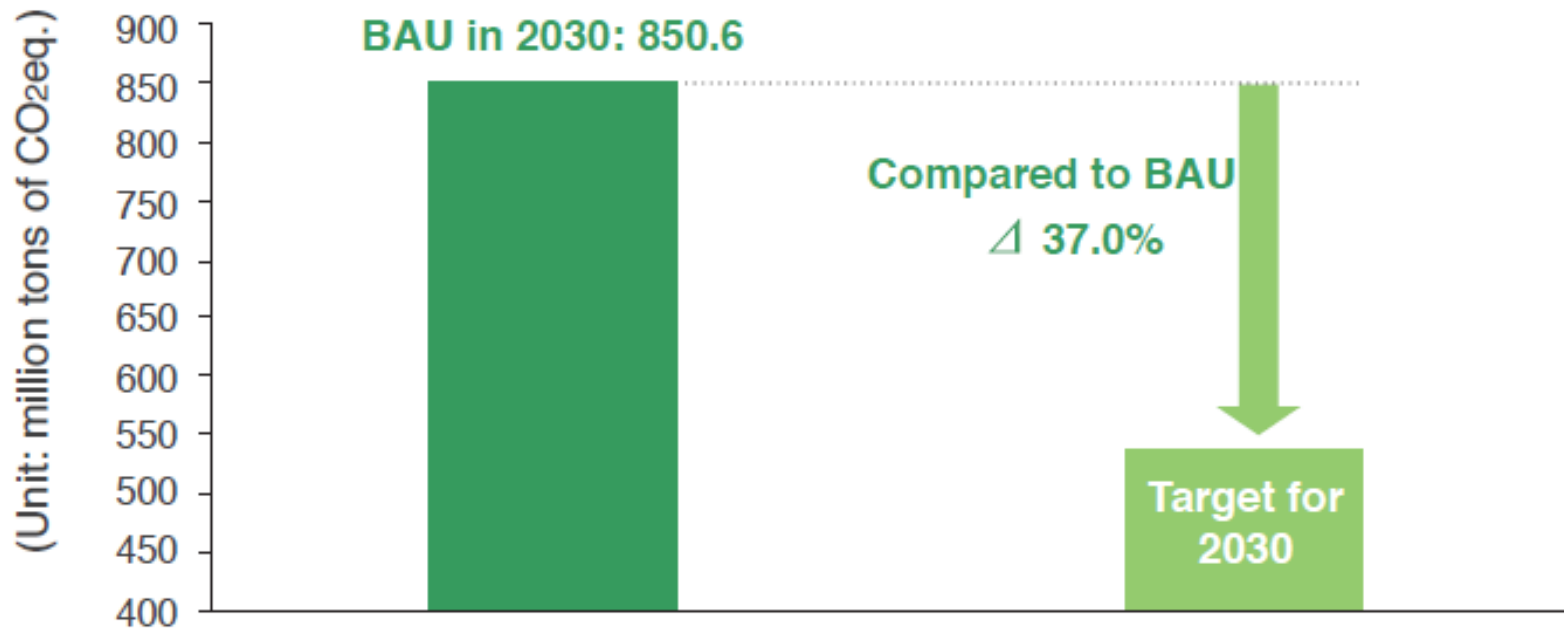


Source: The Government of Republic of Korea, *Second Biennial Update Report of the Republic of Korea*

II. Climate Change Law & Policy of Korea

National GHG Reduction Target

- Korea announced in June 2015 that it would reduce GHG emissions by 37% against 2030 BAU emissions

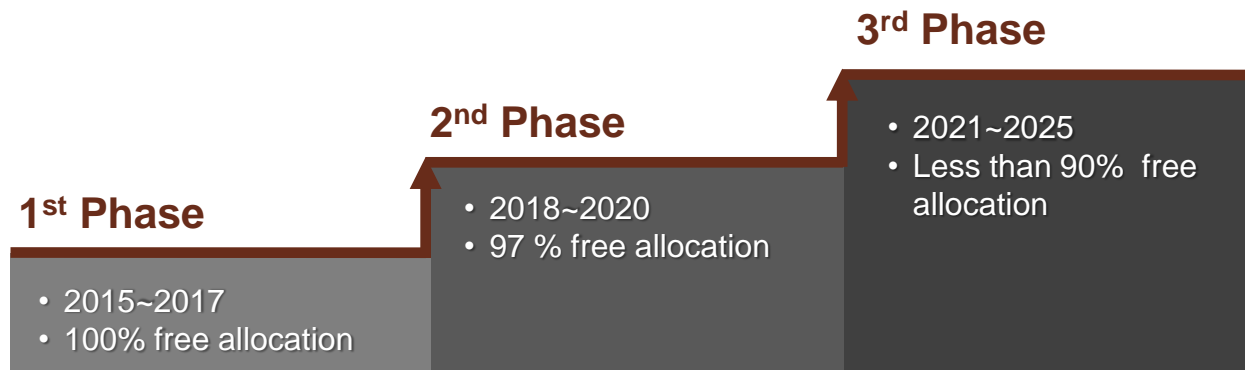


Source: The Government of Republic of Korea, *Second Biennial Update Report of the Republic of Korea*

II. Climate Change Law & Policy of Korea

Major Policies for GHG Reduction

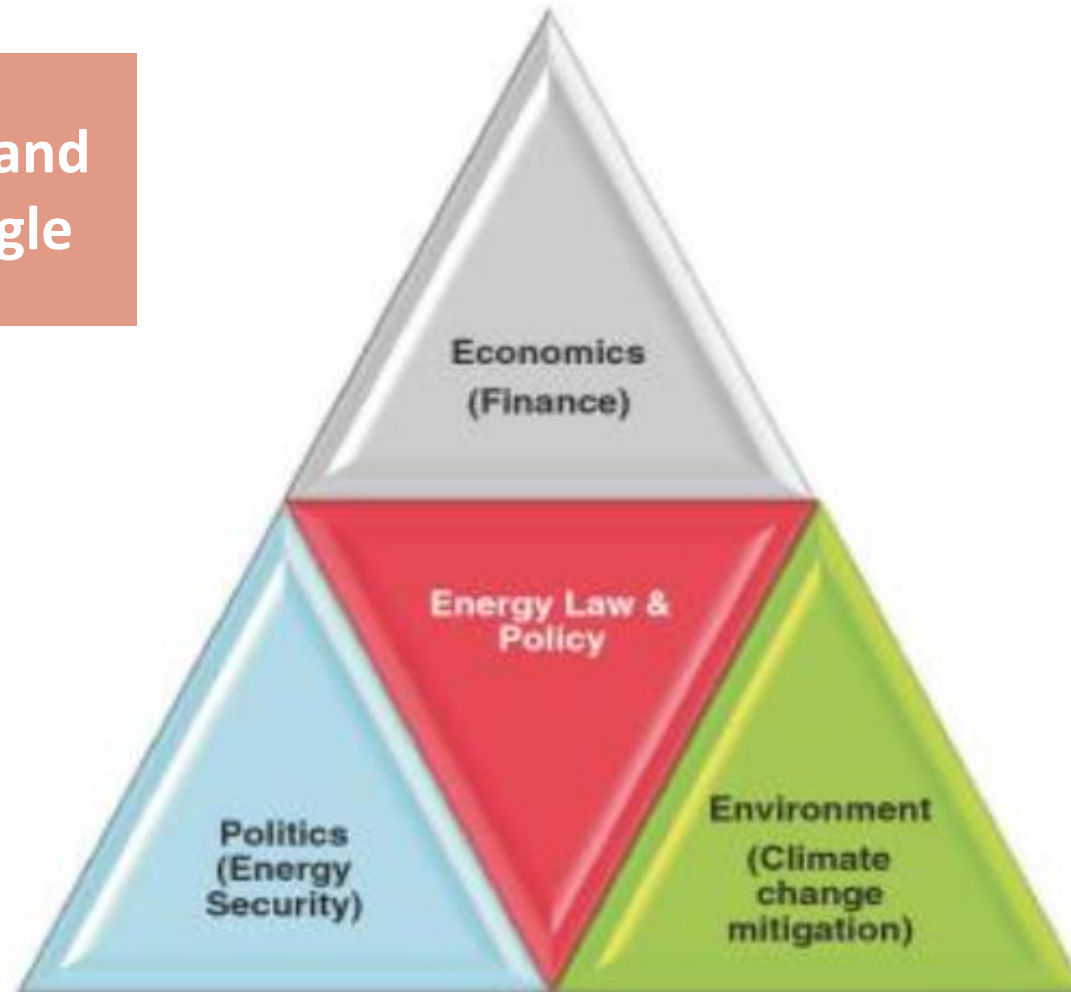
- National GHG Reduction Target and Roadmap (2016~)
- Emission Trading Scheme (“K-ETS”) (2015~)



- Target Management System for GHG and Energy (“TMS”) (2011~)
- Carbon Tax (under discussion)

III. Energy Law & Policy of Korea: The Triangle

Energy Law and Policy Triangle

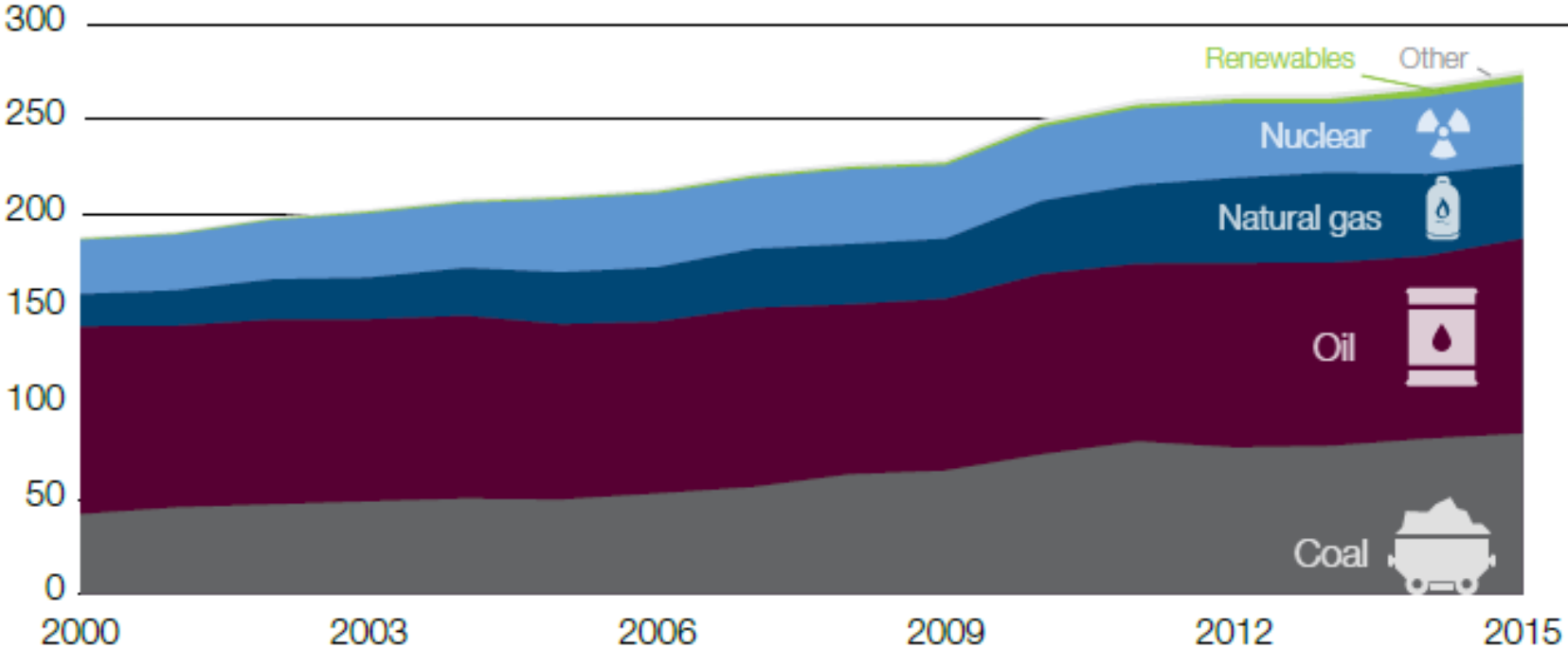


Source: Raphael J. Heffron, *Energy Law: An introduction*, Springer (2015)

III. Energy Law & Policy of Korea : Energy Mix

Figure 2. **Fossil fuels dominate Korea's energy mix**

Total primary energy supply, Mtoe



* Source: IEA (2016), IEA World Energy Statistics and Balances

III. Energy Law & Policy of Korea : Renewable Energy

Renewable Portfolio Standards

- Introduction of Renewable Portfolio Standards (RPS)
- Mandatory supply rate under the RPS system will be raised to 7.0% by 2020.

[Table 3.3] Implementation Results of the Renewable Portfolio Standard (RPS) Mandate

Type \ Year	2013	2014	2015
Mandatory supply rate	2.5%	3.0%	3.0%
Target (REC)	10,896,557	12,905,431	13,838,637
Implementation (REC)	7,324,861	10,078,351	12,486,461
Implementation / Target	67.2%	78.1%	90.2%

※ REC: Power generated from renewable sources (1MW) × Weight for each energy source

Source: The Government of Republic of Korea, *Second Biennial Update Report of the Republic of Korea*

III. Energy Law & Policy of Korea : Energy Efficiency

Major Energy Efficiency Programs of Energy Use Rationalization Act

- Energy Efficiency Standards & Labeling Program (1992~)
- E-Standby Program (1999~)
- High Efficiency Appliance Certification Program (1996~)



< Energy Efficiency Grade Label >



< e-Standby Program Label >



< High-efficiency Appliance Label >

IV. Implication of Energy Transition in Korea

Being consistent with international trends of energy law

- The transition must be maintained in a consistent direction over the long term

Enhancing Korea's position in the international climate regime

- Chance to enhance international recognition for its carbon reduction performance

Possibility of positive impact on other countries

- Taking a leading role in the neighboring Asian countries

IV. Implication of Energy Transition in Korea

Four Ways to Accelerate the Energy Transition in Korea

- Transforming Energy Law through Adaptive & Flexible Approach
 - launch pilot projects and regularly analyze effectiveness of policies
- Improving Energy Efficiency
 - increase awareness across all industrial sectors
 - encourage consumers to focus on greater energy efficiency
- Managing Energy Demand
 - give efforts to bend the growth curve of energy demand
- Decarbonizing the Power Sector
 - explore a practical way to cut emissions from power sector and design an effective policy

Thank you

These materials are provided for general informational purposes only and should not be considered reflecting legal opinions of the firm nor relied upon in lieu of specific advice. Recipients of these materials, whether clients or otherwise, should not act or refrain from acting on the basis of any information included in this material without seeking appropriate legal or professional advice. These materials are property of Kim & Chang, and therefore, while recipients may view the materials recipients may not otherwise distribute, disclose or provide to third parties without Kim & Chang's prior written consent.

KIM & CHANG

39, Sajik-ro 8-gil, Jongno-gu, Seoul 03170, Korea

Tel: +82-2-3703-1114 Fax: +82-2-737-9091 / 9092 E-mail: lawkim@kimchang.com www.kimchang.com

**NAGOYA PROTOCOL ON Access to Genetic
Resources and the Fair and Equitable Sharing of Benefits
Arising from their Utilization to CBD
-Focusing on the Scope of Access and Benefit Sharing-**

**Won Seog Park, *S.J.D.*
Professor of Law
School of Law
Chung-Ang University**

SCOPE OF PRESENTATION

Access to GR & Associated TK-Prior Informed Consent from Country of Origin

Benefit Sharing—with Country of Origin or IPLC—on mutually agreed terms(MAT)

Compliance-Monitoring PIC/MAT or Utilization

Traditional **K**nowledge—Associated with GR—held by IPLC—Benefits shared with IPLC

Scope: Temporal: GR or TKaGR of pre-CBD/post-CBD/post-NP?

Geographical: w/n or beyond Nat'l Jurisdiction

Subject Matter: GR or Derivatives or its Products?

INTRODUCTION TO NAGOYA PROTOCOL

A Masterpiece in Creative Ambiguity,

or

Worstpiece in Ambiguous Creativity?

Recognition of Sovereign Rights over their Genetic Resources

- **Pre-1993 CBD**

- Common Heritage of Humankind

- Free Access and Utilization

- Aspirin(willow tree), Tamiflu(Star anise of China)

- **Post-1993 CBD**

- Recognizing Sovereign Rights of Country of Origin over Genetic Resources

- Sovereign Rights-Giving up possible(EU, Japan)

- **No PIC & MAT, Nor Utilization, unless otherwise Determined**

DEFINITION OF KEY WORDS

- **Genetic Resources: Material of Plant, Animal, Microbial or other Origin containing Functional Units of Heredity(ex., Nucleic Acid, DNA)**
- **NP: Expansion of Scope of Application with additional definition of “Utilization of GR” & inclusion of TK ass’d with GR**
- **Country of Origin: Country which possesses those GR in in-situ conditions(that is, w/n ecosystems & natural habitats)**

Utilization of Genetic Resources?

- **“Utilization of GR”**: means to **conduct research and development on the genetic resources** and/or biochemical composition of genetic resources, including **through the application of biotechnology** as defined in Article 2 of the Convention
- **Biotechnology**: means any technical application that uses biological systems, living organisms, or **derivatives thereof**, to make or modify products or processes for specific use

Derivatives Included?—

YES(partically)

- “Derivatives”: a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not have functional units of heredity
- Ex.,) Snake venom, Seashell, or Latex from rubber tree(gum tree)



TEMPORAL SCOPE OF ACCESS AND BENEFIT SHARING

- GR accessed and **utilized before 1993 CBD?**
- GR **accessed before 1993 CBD** but **utilized after CBD?**
- GR **accessed between 1993 CBD and 2014 NP**, and then **utilized before NP?**
- GR accessed between 1993 CBD and NP, and then **utilized after NP?**
- GR accessed **after NP?**

SCOPE OF APPLICATION

- Article 3 of NP
 - Applies to Genetic Resources **within the scope of Article 15** of CBD & to **Benefits** arising from Utilization of **Such** GR
 - Applies to Traditional Knowledge associated with GR **within the scope of CBD** & to **Benefits** arising from Utilization of **such TK**
- **Art. 28 of VCLT: No Retrospective Effect to facts and situations which took place or ceased to exist**

SCOPE OF APPLICATION:

Art. 15 of CBD

Art. 15.1: Recognizing the **Sovereign Rights of States** over **their Natural Resources**, the authority to determine access to Genetic resources rests with the national governments and is subject to national legislation

Art. 15.3: For the purpose of this Convention, the genetic resources being provided by a contracting party, as referred to in this Article, are only those that are provided by Contracting Parties that are countries of origin of such resources or ---

Art. 15.4: **Access, where granted, shall be on mutually terms** and subject to the provisions of this Article

Art. 15.5: **Access to GR shall be subject to PIC** of the Contracting Party providing such resources, **unless otherwise determined by that Party**

CBD Art. 15.7: Each Contracting Party **shall take legislative, administrative or policy measures, as appropriate**, and in accordance with Articles and, where necessary, through the financial mechanism established by Articles 20 and 21 **with the aim of sharing in a fair and equitable way the results of research and developments and the benefits arising from the commercial and other utilization of genetic resources** with the Contracting Party providing such resources. **Such sharing shall be upon mutually agreed terms.**

WHAT TRIGGERS APPLICATION OF NAGOYA PROTOCOL

- **What Triggers the application of NP**
 - Access to GR or
 - Utilization of GR?
- **Access?: Acquisition** of GR or TKaGR **after** NP & ABS Measure established
 - may apply to GR or TKaGR **acquired after NP**
- **Utilization?: Continuing or New Utilization?**
 - may apply to GR or TKaGR **acquired b/f CBD?**
- IUCN: GR **accessed after CBD** unless expressly given up

WORDING from PROVIDER COUNTRIES

- NP also applies to:
 - Benefits arising from [**continuing**] & [**new**]
Utilization of GR & TKaGR acquired **b/f CBD**
- **New Access: Continuing Access to GR w/o further Utilization**
- **New Utilization?: Change of Use of GR acquired b/f CBD or NP**
- **Continuing Utilization?: No Change in Use of GR acquired b/f CBD or NP w/o further Utilization**

ENTRY INTO FORCE of PIC REQUIREMENT

-What If there was no ABS Law or requirements,

IMPLIED GIVING UP?

-Nagoya Protocol itself: No Retrospective Effect

Cf) EU: Acquisition of GR or TK a/f Entry into Force of NP

in a Party to NP with Applicable ABS Law or Req.

GLOBAL MULTILATERAL BENEFIT SHARING MECHANISM

- Art. 10 of NP
 - shall Consider need for and mechanism of GMBSM
 - applies to GR and TKaGR in **Transboundary Situations** or **not possible to grant or obtain PIC**
- NP ABS Regime: intended to be **BILATERAL** Approach
- NO Consensus on the NEED for GMBSM
- Determine the NEED after Accumulated Experiences
- **Identify Cases not Captured under Bilateral Approach**



Thank you