

GENEVA CONVENTIONS ACT

Act 59 of 1970 – 24 December 1970

ARRANGEMENT OF SECTIONS

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GENEVA CONVENTIONS ACT

1. Short title

This Act may be cited as the Geneva Conventions Act.

2. Interpretation

In this Act—

“Conventions” means the First Convention, the Second Convention, the Third Convention and the Fourth Convention;

“Court” does not include a court-martial or other military Court;

“First Convention” means the Geneva Convention for the amelioration of the condition of the wounded and sick in the armed forces in the field, adopted at Geneva on 12 August 1949;

“Fourth Convention” means the Geneva Convention relative to the protection of civilian persons in time of war adopted at Geneva on 12 August 1949;

“Minister” means the Minister to whom responsibility for the subject of internal affairs is assigned;

“protected internee” means a person protected by the Fourth Convention or Protocol I and detained in Mauritius;

“protected prisoner of war” means a person protected by the Third Convention or a person who is protected as a prisoner of war under Protocol I;

“protecting power”, in relation to a protected prisoner of war or a protected internee, means the power or organisation which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention or the Fourth Convention or Protocol I, as the case may be;

“Protocol I” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 10 June 1977;

“Protocol II” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II), done at Geneva on 10 June 1977;

“Protocols” means Protocol I and Protocol II;

“Second Convention” means the Geneva Convention for the amelioration of the condition of wounded, sick, and shipwrecked members of armed forces at sea, adopted at Geneva on 12 August 1949;

“Third Convention” means the Geneva Convention relative to the treatment of prisoners of war, adopted at Geneva on 12 August 1949.

[S. 2 amended by s. 3 of Act 2 of 2003.]

3. Breaches of Conventions and Protocol I

(1) Any person who in Mauritius or elsewhere commits, or is an accomplice in the commission by another person of, a grave breach of any of the Conventions or of Protocol I shall commit an offence.

(2) For the purposes of this section—

- (a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in Article 50 of that Convention, committed against persons or property protected by that Convention;
- (b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention, committed against persons or property protected by that Convention;
- (c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in Article 130 of that Convention, committed against persons or property protected by that Convention;
- (d) a grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in Article 147 of that Convention, committed against persons or property protected by that Convention;

- (e) a grave breach of Protocol I is any breach referred to as a grave breach of that Protocol in paragraph 4 of Article 11, or paragraph 2, 3 or 4 of Article 85, of that Protocol.

(3) This section applies to persons regardless of their nationality or citizenship.

(4) Any person who commits an offence against this section shall, on conviction, be liable—

- (a) where the offence involves the wilful killing of a person protected by the relevant Convention or of Protocol I, to the same penalty as that for the time being for murder;
- (b) in any other case, to penal servitude for a term not exceeding 15 years.

(4A) Any person who, in Mauritius, commits any breach of any of the Conventions or Protocols other than a breach referred to in subsection (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

(4B) A Mauritian Court shall have jurisdiction to try the offence, and inflict the penalty, specified in subsection (4A), where the act constituting the offence under that subsection has been done or completed outside Mauritius.

(5) No proceedings for an offence under this section shall be instituted without the consent of the Director of Public Prosecutions.

(6) Section 5, excluding subsection (2), shall apply in relation to the trial of a person who is not a protected prisoner of war for an offence against this section as it applies in relation to the trial of a protected prisoner of war.

(7) Where, in proceedings for an offence under this section in respect of a grave breach of any of the Conventions, or of the Protocols, any question arises under Article 2 or 3 of that Convention, Article 1 or 3 of Protocol I or Article 1 of Protocol II, that question shall be determined by the Minister, and a certificate purporting to set out any such determination and to be signed by or on behalf of the Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(8) The Minister's certificate under subsection (7) shall be *prima facie* evidence of the matter stated therein.

[S. 3 amended by s. 4 of Act 2 of 2003.]

4. Trial of protected persons

(1) The Court before which—

- (a) a protected prisoner of war is brought up for trial for any offence; or
- (b) a protected internee is brought up for trial for an offence for which that Court has power to sentence him to death or to penal servitude,

shall not proceed with the trial until it is proved to the satisfaction of the Court that a notice containing the particulars mentioned in subsection (2), so far as they are known to the prosecutor, has been served not less than 3 weeks previously on the protecting power (where there is a protecting power), on the accused, and (where the accused is a protected prisoner of war) on the prisoner's representative.

- (2) The particulars referred to in subsection (1) are—
- (a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal or serial number;
 - (b) his place of detention, internment, or residence;
 - (c) the offence with which he is charged; and
 - (d) the Court before which the trial is to take place and the time and place appointed for the trial.
- (3) For the purposes of this section, a document purporting—
- (a) to be signed on behalf of the protected power or by the prisoner's representative or by the accused, as the case may be; and
 - (b) to be an acknowledgment of the receipt by that power, representative, or accused on a specified day of a notice described therein as a notice under this section,

shall, unless the contrary is shown, be evidence that the notice required by subsection (1) was served on that power, representative or accused on that day.

(4) In this section, "prisoner's representative", in relation to a particular protected prisoner of war at a particular time, means the person by whom the functions of a prisoner's representative within the meaning of Article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any Court which adjourns a trial for the purpose of enabling this section to be complied with may, notwithstanding any other enactment, remand the accused for the period of the adjournment.

5. Legal representation

- (1) The Court before which any person is brought up for trial for an offence under section 3, or a protected prisoner of war or protected internee is brought up for trial for any offence shall not proceed with the trial, unless—
- (a) the accused is represented by Counsel; and
 - (b) it is proved to the satisfaction of the Court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to Counsel for the accused,

and if the Court adjourns the trial for the purpose of enabling this subsection to be complied with, then, notwithstanding any other enactment, the Court may remand the accused for the period of the adjournment.

(2) In the absence of Counsel accepted by the accused as representing him, Counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to subsection (1) (b), be regarded for the purposes of that subsection as representing the accused.

(3) Where the Court adjourns the trial under subsection (1) by reason that the accused is not represented by Counsel, the Court shall direct that Counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of Counsel either accepted by the accused as representing him or instructed as mentioned in subsection (2), Counsel assigned under this subsection shall, without prejudice to subsection (1) (b), be regarded for the purposes of subsection (1) as representing the accused.

(4) Counsel shall be assigned under subsection (3) in such manner as may be prescribed and any Counsel so assigned shall be entitled to receive out of the Consolidated Fund such fees as may be prescribed.

[S. 5 amended by s. 5 of Act 2 of 2003.]

6. Appeals by protected persons

(1) Where a protected prisoner of war or a protected internee has been sentenced by a Court to penal servitude, the time allowed in relation to the institution of an appeal or an application for leave to appeal against the conviction or sentence shall, notwithstanding any other enactment, be the period from the date of his conviction, or in the case of an appeal against sentence, of his sentence, to the expiration of 28 days after the date on which the convicted person receives a notice that the protecting power has been notified of his conviction or sentence, being a notice given—

- (a) in the case of a protected prisoner of war, by the Minister; or
- (b) in the case of a protected internee, by or on behalf of the person in charge of the prison or place where he is detained.

(2) Where subsection (1) or (2) applies in relation to a convicted person, unless the Court otherwise orders, an order of the Court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and any law relating to the re-vesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his conviction or sentence is possible.

(3) Subsection (1) or (2) shall not apply in relation to an appeal against a conviction or sentence if, at the time of the conviction or sentence, there is no protecting power.

(4) – (5) —

[S. 6 amended by s. 6 of Act 2 of 2003.]

7. Reduction of sentence and custody

(1) Where a protected prisoner of war or a protected internee is convicted of an offence, the Court shall—

- (a) in fixing a term of imprisonment or penal servitude in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and
- (b) in fixing any penalty, other than imprisonment or penal servitude, in respect of the offence, take that period of custody into account.

(2) Where the Minister is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than 3 months, the Minister may direct that the prisoner shall be transferred from that custody to the custody of the Police and then remain in custody at a place in which protected prisoners of war are detained, and be brought before the Court at the time appointed for his trial.

8. Use of Red Cross and other emblems

(1) Subject to this section, no person shall, without the consent of the Minister, use or display for any purpose any of the following emblems or designations—

- (a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross";
- (b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";
- (c) the following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun";
- (d) the emblem of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem;
- (e) the sign of an equilateral blue triangle on, and completely surrounded by, an orange ground, being the international distinctive sign of civil defence;
- (f) any of the distinctive signals specified in Chapter III of Annex I to Protocol I, being the signals of identification for medical units and transports;

- (g) the sign consisting of a group of 3 bright orange circles of equal size, placed on the same axis, the distance between each circle being one radius, being the international special sign for works and installations containing dangerous forces;
- (h) any design, wording or signal so nearly resembling any of the emblems, designations, signs or signals specified in paragraphs (a) to (g) as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems, designations, signs or signals;
- (i) such other flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms as are prescribed for the purpose of giving effect to the Conventions or Protocols.

(1A) The Minister, in exercising his discretion to consent to the use or display of any emblem, sign, signal, design, wording, identity card, identification card, insignia or uniform referred to in subsection (1) —

- (a) shall consider whether such use or display is for the purpose of giving effect to the provisions of the Conventions or Protocols; and;
- (b) may refuse or withdraw his consent as he thinks fit.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and the Court may order the forfeiture to the State of any goods or other article upon, or in connection with, which an emblem, a designation, a sign, a signal, a design or a wording was used by that person, or of any identity card, identification card, insignia or uniform used in the commission of the offence.

(3) Where a trade mark is registered before 24 December 1970, subsections (1) and (2) shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in subsection (1) (b) or (c).

(4) Where a person is charged with using a design or wording to which subsection (3) applies for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark registered under subsection (3), it shall be a defence for him to prove —

- (a) that he lawfully used that design or wording for that purpose before 24 December 1970; or
- (b) in a case where he is charged with using the design or wording upon goods, that the design or wording has been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before 24 December 1970.

(5) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate,

shall commit the offence and shall be liable to be proceeded against and punished accordingly.

(6) This section extends to the use in or outside Mauritius of an emblem, designation, design, or wording referred to in subsection (1) on any ship or aircraft registered in Mauritius.

(7) No proceedings for an offence under this section shall be instituted without the consent of the Director of Public Prosecutions.

[S. 8 amended by s. 7 of Act 2 of 2003 w.e.f. 17 May 2003.]

9. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide—

- (a) for the form of flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms for use for the purposes of giving effect to the Conventions or the Protocols or both, and regulating their use;
- (b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 2 years.

[S. 9 repealed and replaced by s. 8 of Act 2 of 2003.]
