

Seychelles

## Geneva Conventions Act

Act 20 of 1985

Legislation as at 30 June 2012

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# Seychelles

## Geneva Conventions Act

### Act 20 of 1985

Commenced on 18 August 1986

*[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]*

#### Part I – Preliminary

##### 1. Short title

This Act may be cited as the Geneva Conventions Act.

##### 2. Interpretation

In this Act, unless the context otherwise requires—

"**the Conventions**" means the First Convention, the Second Convention, the Third Convention and the Fourth Convention;

"**court**" does not include a court martial;

"**the First Convention**" means the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field, adopted at Geneva on 12 August, 1949, read with the Protocols;

"**the Fourth Convention**" means the Geneva Convention relative to the protection of civilian persons in time of war adopted at Geneva on 12 August, 1949, read with the Protocols;

"**prisoner's representative**" means, in relation to a protected prisoner of war at a particular time, the person by whom the functions of prisoners' 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 the prisoner was, at or last before that time, detained as a protected prisoner of war;

"**protected internee**" means a person protected by the Fourth Convention and

"**protected prisoner of war**" means a person protected by the Third Convention; interned in Seychelles;

"**protecting power**" means, in relation to a protected prisoner of war or a protected internee, 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 the protecting power under the Third Convention, or the Fourth Convention, as the case may be;

"**the Protocols**" means the Protocols Additional to the Conventions adopted at Geneva on 8 June, 1977;

"**the Second Convention**" means the Geneva Convention for the amelioration of the condition of wounded, sick, and ship- wrecked members of armed forces at sea, adopted at Geneva on 12 August, 1949, read with the Protocols;

"**the Third Convention**" means the Geneva Convention relative to the treatment of prisoners of war, adopted at Geneva on 12 August, 1949, read with the Protocol.

## Part II – Punishment of offenders against the Convention

### 3. Grave breach of Convention

- (1) Any person, whatever his nationality, who, whether in or outside Seychelles, commits, or aids, abets or procures the commission by any other person of, any such grave breach of any of the Conventions as is referred to in the following Articles respectively of those Conventions—
  - (a) Article 50 of the First Convention;
  - (b) Article 51 of the Second Convention;
  - (c) Article 130 of the Third Convention;
  - (d) Article 147 of the Fourth Convention,is guilty of an offence and
  - (i) in the case of a grave breach involving the wilful killing of the person protected by the Convention in question, shall on conviction be sentenced to imprisonment for life; and
  - (ii) in the case of any other grave breach, is on conviction liable to imprisonment for a term not exceeding 14 years.
- (2) Where an offence under this section is committed outside Seychelles, a person may be proceeded against, charged, tried and punished therefor in any place in Seychelles, as if the offence has been committed in that place, and the offence is, for all purposes incidental to or consequential on the trial or punishment thereof, deemed to have been committed in that place.
- (3) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Attorney-General.
- (4) Where in a prosecution for an offence under this section in respect of a grave breach of one of the Conventions, any question arises under Article 2 of that Convention (which relates to the circumstances in which the Convention applies) that question shall be determined by the Minister, and a certificate purporting to set out such determination and to be signed by the Minister is sufficient evidence of such determination and is presumed to be so signed until the contrary is proved.
- (5) Any written law relating to the trial by court-martial of persons who commit civil offences has effect for the purposes of the jurisdiction of courts-martial convened in Seychelles as if this section had not been enacted.

## Part III – Legal proceedings in respect of protected persons

### 4. Notice of trial

- (1) The court before which—
  - (a) a protected prisoner of war is brought up for trial for an 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 imprisonment for 2 years or more,shall not proceed with the trial unless 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 and, if the accused is a protected prisoner of war, on the accused and 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 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 protecting power or by the prisoner's representative or by the person accused, as the case may be; and
  - (b) to be acknowledgment of the receipt by that power, representative or person on a specified day of a notice described therein as a notice under this section,
- is until the contrary is proved, sufficient evidence that the notice required by subsection (1) was served on that power, representative or person on that day.
- (4) Any court which adjourns a trial to enable this section to be complied with may, notwithstanding any other written law, remand the accused for the period of the adjournment.

## 5. Legal representation

- (1) The court before which—
- (a) any person is brought up for trial for an offence under [section 3](#); or
  - (b) a protected prisoner of war is brought up for trial for any offence,
- shall not proceed with the trial, unless—
- (i) the accused is represented by a legal practitioner;
  - (ii) 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 the legal practitioner,
- and, if the court adjourns the trial for the purpose of enabling this subsection to be complied with, the court may, notwithstanding any other written law, remand the accused for the period of the adjournment.
- (2) Where the accused is a protected prisoner of war and there is no legal practitioner accepted by the accused as representing him, a legal practitioner instructed for the purpose on behalf of the protecting power shall, without prejudice to subsection (1)(ii), be regarded for the purposes of subsection (1) as representing the accused.
- (3) Where the court adjourns the trial under subsection (1) because the accused is not represented by a legal practitioner, the court shall direct that a legal practitioner be assigned to watch over the interests of the accused at any further proceedings in connection with the offence.
- (4) At any such further proceedings, if there is no legal practitioner accepted by the accused as representing him or instructed under subsection (2), a legal practitioner assigned under subsection (3) shall, without prejudice to subsection (1) (ii) be regarded for the purposes of subsection (1) as representing the accused.
- (5) A legal practitioner shall be assigned under subsection (3) in such manner as may be prescribed and any legal practitioner assigned is entitled to be paid by the Minister such sums in respect of fees and disbursements as the Minister may direct.

## 6. Appeal

Where a protected prisoner of war or a protected internee has been sentenced to death or to imprisonment for 2 years or more, the time within which he may give notice of appeal or notice of his application for leave to appeal to the Supreme Court or the Court of Appeal, as the case may be, shall, notwithstanding any written law, 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 10 days after the date on which he receives a notice given—

- (a) in the case of a protected prisoner of war, by an officer of the Defence Force;
- (b) in the case of a protected internee, by or on behalf of the Superintendent of Prisons,

that the protecting power has been notified of his conviction and sentence.

## 7. Reduction of sentence and custody

- (1) In any case in which a protected prisoner of war or a protected internee is convicted of an offence and sentenced to a term of imprisonment, the Minister may direct that there shall be deducted from that term a period not exceeding the period, if any, during which that person was in custody in connection with that offence, either on remand or after committal for trial, including the period of the trial, before the sentence began, or is deemed to have begun, to run.
- (2) In a case where he is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, either on remand or after committal for trial, including the period of trial, 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 an officer of the Defence Force and thereafter remain in service custody at a camp or place in which protected prisoners of war are detained and be brought before the court at the time appointed by the remand or committal order.

## 8. Judicial notice of Conventions

In addition to any other means by which the same may be proved in proceedings under this Act, the Court shall take judicial notice of the existence and terms of the Conventions if an official copy of the Conventions is produced and the Minister responsible for external relations certifies it to be a true copy thereof.

# Part IV – Abuse of the red cross and other emblems

## 9. Use of red cross and other emblems

- (1) Subject to this section, no person shall, without the authority of the Minister, use for any purpose any of the following—
  - (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) any design consisting 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;
  - (d) any design or wording so nearly resembling any of the emblems or designations specified in subparagraphs (a) to (c) as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems or designations.

- (2) A person who contravenes subsection (1) is guilty of an offence and is on conviction liable to a fine of R.500 and to forfeit any goods on or in connection with which the emblem, designation, design or wording was used.
- (3) In the case of a trade mark registered before the passing of this Act, this section shall not apply by reason only of the trade mark 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 in 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 before the passing of this Act, it is defence for him to prove—
  - (a) that he lawfully used that design or wording for that purpose before the passing of this Act; or
  - (b) in a case where he is charged with using the design or wording upon goods, that the design or wording had 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 the passing of the Act.
- (5) This section extends to the use in or outside Seychelles of any such emblem, designation, design or wording as is referred to in subsection (1) on any Seychelles ship or aircraft.
- (6) Proceedings under this section shall not be instituted except by or on behalf of the Attorney-General.

## Part V – Regulations

### 10. Regulations

The Minister may make regulations for the better carrying out of the objects and purposes of this Act, including prescribing any matter which is to be or may be prescribed under this Act.