

REPUBLIC OF KIRIBATI
(No. 2 of 1993)

I assent,

Teatao Teannaki
Beretitenti
16/06/1993

**AN ACT TO ENABLE CONTINUED EFFECT TO BE GIVEN TO THE GENEVA
CONVENTIONS RELATING TO THE WOUNDED, PRISONERS OF WAR AND
CIVILIANS IN TIME OF WAR, DONE ON 12TH AUGUST 1949; AND FOR
CONNECTED PURPOSES**

Commencement:
1993

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

Short title

1. This Act may be cited as the Geneva Conventions Act 1993.

Interpretation

2. In this Act, unless the context otherwise requires –

"court" does not include a court-martial;

"the Geneva Conventions" means the following Conventions done at Geneva on 12 August 1949 -

- (a) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field ("the First Geneva Convention");
- (b) the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea ("the Second Geneva Convention");
- (c) the Geneva Convention relative to the Treatment of Prisoners of War ("the Third Geneva Convention");
- (d) the Geneva Convention relative to the Protection of Civilian Persons in the Time of War ("the Fourth Geneva Convention");

"protected internee" means a person protected by the Fourth Geneva Convention interned in Kiribati;

"protected prisoner of war" means a person protected by the Third Geneva Convention;

"the protected 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 or the Fourth Geneva Convention, as the case may be.

PUNISHMENT OF OFFENDERS AGAINST CONVENTIONS

Grave breaches of Geneva Conventions

3. (1) Any person, whatever his nationality and whether in or outside Kiribati, is guilty of an offence if -

- (a) he commits; or
- (b) aids, abets or procures the commission by any other person of,

any such grave breach of any of the Geneva Conventions as is referred to those Conventions, that is to say, a breach constituting of any of the following acts -

- (i) if committed against protected by any of the Geneva Conventions -
 - (aa) wilful killing, torture or inhuman treatment, including biological experiments;
 - (bb) wilfully causing great suffering or serious injury to body or health;
- (ii) if committed against property protected by the First, Second or Fourth Geneva Conventions -

extensive destruction and appropriation of property, not justified by military necessity, and carried out unlawfully and wantonly;

- (iii) if committed against persons protected by the Third Geneva Convention -
 - (aa) compelling a prisoner of war to serve in the forces of a hostile Power;
 - (bb) wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed by that Convention;
- (iv) if committed against persons protected by the Fourth Geneva Convention -
 - (aa) unlawful deportation or transfer or unlawful confinement;
 - (bb) compelling to serve in the forces of a hostile Power;
 - (cc) wilfully depriving of the rights of fair and regular trial prescribed by that Convention;

(dd) taking hostages.

(2) A person who is guilty of an offence under subsection (1) shall, on conviction thereof -

- (a) in the case of such a grave breach involving the wilful killing of a person protected by the Convention in question, be sentenced to imprisonment for life;
- (b) in the case of any other such grave breach, be liable to imprisonment for 14 years.

Offences committed outside Kiribati

4. In the case of an offence under section 3 committed outside Kiribati –

- (a) a person may be proceeded against, tried and punished therefor in any place in Kiribati as if the offence had been committed in that place; and
- (b) the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

Questions relating to application of Convention

5. If, in proceedings under this Act in respect of a grave breach of any of the Geneva Conventions, any question arises under Article 2 of that Convention (which relates to the circumstances in which the Convention applies) –

- (a) that question shall be determined by the Minister; and
- (b) 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.

PROVISIONS AS TO CERTAIN LEGAL PROCEEDINGS

Notice of trial of protected persons

6. (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 imprisonment for a term of 2 years or more,

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 -

- (i) on the protecting Power; and
- (ii) if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

(2) The particulars referred to in subsection (1) are -

- (a) the full name and description of the accused, including -
 - (i) the date of his birth; and
 - (ii) his profession or trade, if any; and
 - (iii) 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 purpose of this section a document purporting -

- (a) to be signed on behalf of the protecting Power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) to be an acknowledgement of the receipt by that Power, representative or person on a specified day of a notice described therein as a notice under this session,

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

(4) In this section the expression -

"prisoners' representative", in relation to a particular protected prisoner of war at a particular time, means the person by whom the functions or prisoners' representative within the meaning of Article 79 of the Third Geneva Convention were exercisable in relation to that prisoner at the camp 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 the requirements of this section to be complied with may, notwithstanding anything in any other enactment, remand the accused for the period of adjournment.

Legal representation of certain persons

7. (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 an advocate; and
- (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 advocate,

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

(2) Where the accused is a protected prisoner of war, in the absence of an advocate accepted by the accused as representing him, an advocate instructed for the purpose on behalf of the protecting Power shall, without prejudice to the requirements of subsection (1)(ii), be regarded for the purposes of subsection (1) as representing the accused.

(3) If the court adjourns the trial in pursuance of subsection (1) by reason that the accused is not represented by an advocate -

- (a) the court shall direct that an advocate be assigned to watch over the interests of the accused at any further proceedings in connection with the offence; and
- (b) at such further proceedings, in the absence of an advocate either accepted by the accused as representing him or instructed as mentioned in subsection (2), the advocate assigned in pursuance of this subsection shall, without prejudice to the requirements of subsection (1)(ii), be regarded for the purposes of subsection (1) as representing the accused.

(4) An advocate shall be assigned in pursuance of subsection (3) in such manner as the Minister may by regulations prescribe, and any advocate so assigned shall be entitled to be paid out of moneys appropriated by the Maneaba ni Maungatabu such sums in respect of fees and disbursements as the Minister may by regulations prescribe.

(5) In this section "advocate" means, in relation to proceedings before any court, a legal practitioner who has a right of audience in that court.

Reduction of sentence and custody of protected persons

8. (1) It shall be lawful for the Minister, 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, to direct that there shall be deducted from that term a period not exceeding the 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) It shall be lawful for the Minister, 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 the trial), for an aggregate period of not less than 3 months, to direct that the prisoner shall be –

- (a) transferred from that custody to the custody of an officer of the disciplined forces of Kiribati and thereafter remain in custody of that force at a camp or place in which protected prisoners of war are detained; and
- (b) brought before the court at the time appointed by the remand or committal order.

PREVENTION OF ABUSE OF RED CROSS AND OTHER EMBLEMS

Use of Red Cross and other emblems

9. (1) Subject to this section, it shall not be lawful for any person, without the authority of the Minister, to use for any purpose whatsoever any of the following emblems or designations, that is to say -

- (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" back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun".

(2) Subject to this section, it shall not be lawful for any person, without the authority of the Minister, to use for any purpose whatsoever -

- (a) 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, design as to be capable of being mistaken for that heraldic emblem;
- (b) any design or wording so nearly resembling any of the emblems or designations specified in subsection (1) as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

(3) Any person who contravenes any of the provisions of subsection (1) or (2) is guilty of an offence and shall be liable on summary conviction –

- (a) to a fine of \$500; and
- (b) to forfeit any goods upon or in connection with which the emblem, designation, design or wording was used.

(4) In the case of a trade mark registered before 1 September 1959 –

- (a) this section 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); and
- (b) where a person is charged with using such a design or wording for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark so registered, it shall be a defence for him to prove -
 - (i) that he lawfully used that design or wording for that purposes before 1 September 1959; or
 - (ii) 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 1 September 1959.

(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, 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 -

- (a) is deemed to be guilty of the offence; and
- (b) shall be liable to be proceeded against and punished accordingly,

and in this subsection the expression "director", in relation to any body corporate established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body.

(6) It is hereby declared that this section extends to the use in or outside Kiribati of any such emblem, designation, design or wording as is referred to in subsection (1) or (2) on any ship or aircraft registered in Kiribati.

CRIMINAL PROCEEDINGS

Application of section 126 of Cap. 17

10. Criminal proceedings under this Act are subject to section 126 of the Criminal Procedure Code (requiring the consent of the Attorney General).

GENEVA CONVENTIONS ACT 1993

EXPLANATORY MEMORANDUM

This Act re-enacts the provisions of the Geneva Conventions Act 1957 (5 & 6 Eliz II, c.52) which was extended to the Gilbert and Ellice Islands, with modifications, by the Geneva Conventions Act (Colonial Territories) Order in Council 1959, SI 1959 No. 1301.

The 1957 Act gave effect to four Geneva Conventions signed in 1949 that are concerned with the treatment of members of armed forces, prisoners of war and civilians caught up in war. These Conventions are sometimes also known as the Red Cross Conventions since they recognise the activities of the Red Cross and similar organisations in the protection of such persons. The conventions are widely adopted throughout the world as a central component of what is now referred to as international humanitarian law.

The Government has not yet formally notified its intention to succeed to these Conventions which were entered into by the United Kingdom on behalf of her then dependencies. But they probably continue to be part of the treaty obligations of Kiribati for the time being under the terms of the Declaration on Treaty Succession made to the UN Secretary-General of 11 September 1979. In any case, the Act, as extended to the Gilbert and Ellice Islands remains part of the law of Kiribati. Re-enactment will facilitate accession to the Conventions at a future date.

Patriation of this inherited imperial Act is by re-enactment, rather than by transcription under the Laws of Kiribati Act 1989, to enable certain provisions of the original United Kingdom Act to be omitted. That Act set out in four Schedules the text of the Geneva Conventions, which in the official United Kingdom publication ran to 130 pages. Reproduction as part of the law of Kiribati seems unnecessary. Certain minor modifications to the text are called, notably the inclusion in section 3 of certain provisions from the Conventions that were merely referred to in the original. These changes fall outside the terms of the Laws of Kiribati Act 1989.

The Act is required to give effect as part of the law of Kiribati to a small number only of the provisions of the Conventions. Obligations are imposed upon Contracting Parties to enact legislation to apply penal sanctions to certain grave breaches committed against persons and property protected by the four Conventions (Articles 49, 50, 129 and 146, respectively). Section 3 specifies the nature of the grave breaches using the language of Articles 50 (First Convention), 51 (Second Convention) 130 (Third Convention) and 147 (Fourth Convention). These grave breaches are in fact war crimes. Thus, where wilful killing is involved, life imprisonment is prescribed; for other breaches the penalty is 14 years imprisonment. Offences committed outside Kiribati may be tried in Kiribati (section 4). The Minister of Foreign Affairs may rule as to the application of the Conventions, which is matter of international law (section 5).

Other provisions requiring local legislation concern the trial of protected prisoners of war or protected internees for offences that they may commit whilst in detention (Part III of the Third Convention; Article 117 of the Fourth Convention). Section 6 imposes obligation to notify the protecting authority under the Convention of any such proceedings. Section 7 creates a duty to ensure legal representation of prisoners of war in any criminal proceedings and of war criminals charged with grave breaches of the Conventions. Section 8 permits the reduction of sentence where a prisoner of

war or protected person has been in custody prior to trial in connection with the offence.

The Conventions also prohibit misuses of the "Red Cross" and similar designations (Article 53 of the First Convention). Section 9 therefore prohibits the use of emblems and designations of this kind without the approval of the Minister. Protection of trade marks that incorporated these devices prior to the date of operation of the United Kingdom Act is continued.

Section 10 requires the consent of the Attorney General to any prosecutions under this Act, as they can give rise to international considerations.

Michael Neaua Takabwe
Attorney General
21 January 1991