

ARRANGEMENT OF SECTIONS

Section

Offences and trial

1. Offences in contravention of the Conventions and Protocol 1
2. Jurisdiction of courts
3. Questions to be referred to Minister
4. Notice of trial
5. Adjournments
6. Legal representation
7. Appeal by a protected prisoner or a protected internee
8. Execution
9. Reduction of sentence

The Emblems

10. The Emblems
11. Organisations entitled to use the emblems
12. Construction of the Conventions and Protocols
13. Application

General provisions

14. Regulations
15. Interpretation
16. Repeal
17. Savings



THE SEVEN HUNDRED AND EIGHTIETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

GENEVA CONVENTIONS ACT, 2009

AN ACT to give effect to the Geneva Conventions done at Geneva on 12th August, 1949 and to the Protocols additional to those Conventions done at Geneva on 10th June 1977 to incorporate the Conventions as part of the domestic law to create a framework for the effective implementation of provisions of the Conventions in this country and to provide for related matters.

DATE OF ASSENT: 6th January, 2009.

ENACTED by the President and Parliament:

Offences and trial

Offences in contravention of the Conventions and Protocol I

1. (1) A person of whatever nationality, commits an indictable offence, if that person, whether within or outside this country commits, aids, abets or procures any other person to commit a grave breach specified in

(a) article 50 of the First Convention in respect of the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, stated in the First Schedule,

(b) article 51 of the Second Convention in respect of the Geneva Conventions for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the

Armed Forces at sea, of August 12, 1949, stated in the Second Schedule,

(c) article 130 of the Third Convention in respect of the Geneva Conventions Relative to the Treatment of Prisoners of War, of August 12, 1949, stated in the Third Schedule,

(d) article 147 of the Fourth Convention in respect of the Geneva Conventions Relative to the Protection of Civilian Persons in Time of War, of August 12, 1949, set out in the Fourth Schedule, and

(e) article 11(4) or paragraphs 2, 3 and 4 of article 85 of the Protocol 1 set out in the Fifth Schedule.

(2) A person who commits an offence under subsection (1) is liable on conviction,

(a) in the case of a grave breach which involves the wilful killing of a person protected by the relevant Convention or Protocol to death; and

(b) in the case of any other grave breach, to a term of imprisonment of not less than fourteen years.

(3) A person, who in Ghana commits, abets, aids or procures any other person to commit a breach to the Conventions or Protocols not covered under subsection (1) commits an indictable offence and is liable on conviction to a term of imprisonment of not more than fourteen years.

(4) Where a person commits an offence under this section outside the country, the person may be tried and punished as if the offence were committed in this country.

(5) A citizen who outside the country, commits an offence or aids, abets or procures the commission by any other person of an offence other than that specified in subsection (1) but which contravenes any of the Conventions or Protocol, is liable on conviction on indictment to a term of imprisonment of not less than fourteen years.

Jurisdiction of Courts

2. (1) The High Court has jurisdiction to try an offence under section 1.

(2) A court martial or other military court may try a person for an offence which, under the Armed Forces Act, 1962 (Act 105), is triable by that court although the offence is also an offence under section 1.

Questions to be referred to Minister

3. (1) Where a question arises as to whether any of the Conventions or Protocols is applicable in a trial for an offence under this Act, that question shall be determined by the Minister responsible for Foreign Affairs.

(2) A certificate which indicates that determination and is signed by or on behalf of the Minister responsible for Foreign Affairs is evidence of the matter certified unless the contrary is proved.

Notice of trial

4. (1) A court shall not try a protected prisoner of war or a protected internee unless the court is satisfied that the protecting power and the legal representative of the prisoner of war or internee have been given at least twenty-one days notice of the trial by the prosecutor.

(2) The notice shall include

- (a) the full name and description of the accused person including the accused person's date of birth, profession or trade,
- (b) the accused person's rank and army, regimental, personal or serial number if the accused is a protected prisoner of war,
- (c) the place of detention, internment or residence of the accused person,
- (d) the offence with which the accused person is charged, and
- (e) the court before which the trial is to take place and the time and place of the trial.

(3) A document which is

- (a) signed on behalf of the protecting power or by the prisoner's representative or by the accused person, and
 - (b) an acknowledgement of receipt by that power, representative or accused person of the notice
- is sufficient evidence that the notice required has been served on the power, representative or accused person unless the contrary is proven.

Adjournments

5. A court which adjourns a trial for the purpose of enabling the requirements of this Act to be complied with, may remand the accused person in custody for the period of the adjournment.

Legal representation

6. (1) The court before which a person is brought for trial for an offence under this Act shall not proceed with the trial unless

- (a) that person is represented by a lawyer qualified to practise in this country, and
- (b) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions to represent the accused person were given to the legal representative.

(2) Where that person is a protected prisoner of war, a lawyer instructed for that purpose by or on behalf of the protecting power shall, without limiting paragraph (b) of subsection (1), represent the accused person in the absence of a lawyer acceptable by that person as that person's representative.

(3) Despite paragraph (b) of subsection (1), where the court adjourns a trial because the accused person is not represented and the protecting power has failed to instruct a lawyer, the court shall appoint a lawyer to represent the accused person.

(4) The Legal Aid Scheme Act, 1997 (Act 542) applies for the purpose of providing representation by a lawyer for the accused person.

Appeal by a protected prisoner or a protected internee

7. (1) A protected prisoner of war or a protected internee who has been sentenced to death or to imprisonment for two years or more or who wishes to appeal against the conviction or sentence may

- (a) give notice of appeal, or
- (b) give notice of that prisoner or internee's application for leave to appeal

to the appellate court between the date of the conviction and sentence and ten days after being notified by the officer in charge of the place where that prisoner or internee is interned or confined that the protecting power has been informed of the conviction and sentence.

(2) Subsection (1) applies despite anything to the contrary with respect to the procedure for appeals in any enactment.

(3) Where an appeal is pending

- (a) the court shall not make an order in respect of the restitution of property or the payment of compensation to an aggrieved person, and
- (b) any law in respect of the reversion of property shall not apply.

(4) The provisions of subsections (1) and (2) shall not apply if there was no protecting power at the time of the conviction or sentence.

Execution

8. Where a sentence of death is pronounced on a protected prisoner of war or a protected internee, the sentence shall not be executed before the expiration of a period of at least six months from the date when the protecting power is notified of the final judgment.

Reduction of sentence

9. (1) Where a protected prisoner of war or a protected internee is convicted of an offence, the court shall

(a) deduct from the term of imprisonment the period during which the convicted person was in custody in connection with that offence before and during the trial when fixing a term of imprisonment in respect of the offence, and

(b) take into account the prior period of custody in respect of the offence, when fixing a penalty, other than imprisonment.

(2) Where a protected prisoner of war or a protected internee has been

(a) in custody, or

(b) on remand,

after committal for trial, including the period of the trial in connection with an offence, the Attorney-General may direct the transfer of the prisoner from the custody to the custody of an officer of the Armed Forces and to remain in military custody at a camp or holding place in which protected prisoners of war are detained.

(3) A protected prisoner or a protected internee transferred to military custody shall be brought before the court at the time appointed by the remand or committal order.

The Emblems

The Red Cross and other emblems

10. (1) Subject to section 11, a person or organisation shall not use for any purpose

(a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white back ground, or the designation "Red Cross" or "Geneva Cross";

- (b) the emblem of a red crescent moon on, and completely surrounded by, a white background or designation "Red Crescent";
- (c) the emblem of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by a red background being the heraldic emblem of the Swiss Confederation;
- (d) the emblem in red on, and completely surrounded by, a white background, that is to say, a lion passing from right to left 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";
- (e) the sign of an equilateral blue triangle on, and completely surrounded by, an orange background, being the international distinctive sign of civil defence;
- (f) any of the distinctive signals specified in Chapter III of Annex 1 to Protocol 1, being the signals of identification for medical units and transport;
- (g) the sign consisting of a group of three 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) a design, wording or signal so nearly resembling any of the emblems, designations, signs or signals specified in paragraph (a), (b), (c), (d), (e), (f) or (g) as to be capable of being mistaken for, or understood as referring to, one of those emblems, designations, signs or signals; or
- (i) any other flag, 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 without the consent in writing of the Minister.

(2) The Minister shall not give consent for the use of the Emblems except to give effect to the Conventions or Protocols and may refuse or withdraw the consent.

(3) This section extends to the use in or outside this country of an emblem, designation, sign, signal, design, wording, identity card, identification cards, insignia or uniform referred to in subsection (1) on a ship or aircraft registered in the country.

(4) A person who contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine of not more than fifty penalty units or to imprisonment for a term of not more than three months or to both.

(5) Where a person is convicted of an offence under subsection (1), the court may, in addition to the term of imprisonment or fine, order the forfeiture to the Republic the goods in connection with which the emblem, designation, design, identity cards, insignia or uniforms was used by that person.

(6) Where an offence under this section is committed by a body of persons,

(a) in the case of a body corporate every director or officer of that body corporate commits that offence; and

(b) in the case of a firm or partnership, every partner commits that offence.

(7) A person shall not be convicted of an offence by virtue of subsection (6) if it is proved that the offence was committed without that person's knowledge or that due diligence was exercised by that person to prevent the commission of the offence.

Organisations entitled to use the emblems

11. (1) The following organisations are entitled, to use the emblems specified under subsection (1) of section 10 only in conformity with the Conventions and Protocols:

(a) the Ghana Armed Forces Medical Corps under the supervision of the Minister for Defence;

(b) the Ghana Red Cross Society in conformity with the Regulations on the use of the emblem of the Red Cross or Red Crescent;

(c) the National Societies of the International Committee of the Red Cross; and

(d) the International Federation of the Red Cross and Red Crescent Societies.

(2) The Ghana Red Cross Society may exceptionally authorise the use of Red Cross emblem by third parties in accordance with the Regulations on the use of the Emblem of the Red Cross or the Red Crescent by the National Societies.

Construction of the Conventions and Protocols

12. If the ratification on behalf of any of the Conventions or of either of the Protocols is subject to a reservation or is accompanied by a declaration, that Convention or Protocol shall, for the purposes of this Act have effect and be construed subject to and in accordance with that reservation or declaration.

Application

13. This Act binds the Republic and applies to every person.

*General provisions***Regulations**

14. The Minister may, by legislative instrument, make regulations to

- (a) ensure that persons and places protected by the Conventions and Protocols are properly identified, located and protected;
- (b) protect the fundamental and procedural guarantees during time of armed conflict;
- (c) prescribe the form of flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms for use; and
- (d) provide for any other matter necessary for the effective implementation of the provisions of this Act.

Interpretation

15. In this Act, unless the context otherwise requires,

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

“grave breaches” include willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and unwantonly against persons or property protected by law;

“Minister” means the Attorney-General and the Minister responsible for Justice;

“prisoner representative” means a person who performs the functions under article 79 of the Third Schedule;

“protected internee” means a person protected by the Fourth or Fifth Schedule and interned in Ghana;

“protected prisoner of war” means a person protected by the Third Schedule or a person who is protected as a prisoner of war under the Fifth Schedule;

“protecting power” means the power or organisation which is carrying out, in the interests of the power of which that person is a national or of whose forces that person is or was at any material time, a member, the duties assigned to protecting powers under the Third, the Fourth or the Fifth Schedule; and

“Protocols” means Protocol I and Protocol II.

Repeal

16. (1) The Red Cross Emblem (Control) Decree 1973 (N.R.C.D. 216) is hereby repealed.

(2) Despite the repeal under sub-section (1), any regulation made under the repealed enactment shall unless it is inconsistent with this Act, continue to have effect as if made under this Act.

Savings

17. (1) A trademark registered prior to the commencement of this Act shall continue to have effect despite the fact that it consists of or contains a sign specified in sub-paragraphs (b) or (d) of section 11 (1) or a design that resembles that sign.

(2) Where a person is charged with the use of a sign or design for a purpose other than as or as part of the trademark registered, it is a defence for that person to prove that the sign or design was lawfully used for that purpose prior to the commencement of this Act.

(3) Where a person is charged with the use of the sign or design on goods or any other article, it is a defence for that person to prove that the sign or design had been applied to the goods or article

(a) before the person acquired them, or

(b) by another person who had manufactured or dealt with them in the course of trade and who lawfully used the sign or design on similar goods or article prior to the commencement of this Act.