



REPUBLIC OF NAURU

Geneva Conventions Bill 2012

Serial No. 13 of 2012

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REPUBLIC OF NAURU

Geneva Conventions Bill 2012

Serial No. 13 of 2012

A Bill for:

An Act to give effect to the Geneva Conventions and the Protocols

Certified on....

Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Geneva Conventions Act 2012*.

2 Commencement

This Act commences on certification.

PART 2 – INTERPRETATION

3 Definitions

In this Act:

‘Convention’ means:

- (a) the **‘First Convention’** – 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; or
- (b) the **‘Second Convention’** – the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949; or
- (c) the **‘Third Convention’** – the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949; or
- (d) the **‘Fourth Convention’** – the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949;

‘grave breach’, of a Convention or Protocol, see section 4;

‘Nauru registered aircraft’ has the same meaning as in the *Civil Aviation Act 2011*;

‘Nauruan ship’ has the same meaning as in the *Shipping Registration Act 1968*;

‘prisoners’ representative’, for a protected prisoner of war, means the prisoners’ representative for the prisoner under Article 79 of the Third Convention;

‘protected emblem’, see section 5(1);

‘protected internee’ means a person who is:

- (a) protected by the Fourth Convention or Protocol I; and
- (b) interned in Nauru;

‘protected item’, see section 5(2);

'protected person' means a protected internee or a protected prisoner of war;

'protected prisoner of war' means a person who is protected:

- (a) by the Third Convention; or
- (b) by Protocol I as a prisoner of war or as if the person were a prisoner of war;

'Protecting Power', for a protected prisoner or protected internee, means the person carrying out the duties assigned to Protecting Powers under the Third Convention, the Fourth Convention or Protocol I in relation to the prisoner or internee;

'Protocol' means:

- (a) **'Protocol I'** – the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, done at Geneva on 8 June 1977 (including Annex I to the Protocol); or
- (b) **'Protocol II'** – the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, done at Geneva on 8 June 1977;
- (c) **'Protocol III'** – the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem, done at Geneva on 8 December 2005;

'registered trade mark' means a trade mark registered under the *Trade Marks Act 1955* (Commonwealth) (as applied to Nauru by the *Laws Repeal and Adopting Act 1922*) before the commencement of this Act;

'third Protocol emblem' means the emblem mentioned in Article 2, paragraph 2 of Protocol III.

4 Meaning of grave breach

In this Act:

- (a) a **'grave breach'** of the First Convention is a grave breach mentioned in Article 50 of the Convention; and

- (b) a **'grave breach'** of the Second Convention is a grave breach mentioned in Article 51 of the Convention; and
- (c) a **'grave breach'** of the Third Convention is a grave breach mentioned in Article 130 of the Convention; and
- (d) a **'grave breach'** of the Fourth Convention is a grave breach mentioned in Article 147 of the Convention; and
- (e) a **'grave breach'** of Protocol I is a grave breach mentioned in Article 11, paragraph 4, or Article 85, paragraph 2, 3 or 4; and
- (f) a **'grave breach'** of Protocol III is the perfidious use, in violation of Article 37 of Protocol I, of the third Protocol emblem.

5 Meaning of protected emblem and protected item

- (1) For this Act, each of the following emblems is a **'protected emblem'**:
 - (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 emblem in red of 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, on, and completely surrounded by, a white ground, or the designation 'Red Lion and Sun';
 - (d) the emblem in red of a red frame in the shape of a square on edge (whether or not incorporating within its centre another emblem or sign or a combination of another emblem and sign in accordance with Article 3, paragraph 1 of Protocol III), on, and completely surrounded by, a white ground, or the designation 'Red Crystal', or the designation 'third Protocol emblem';

- (e) 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;
 - (f) the sign of an equilateral blue triangle on, and completely surrounded by, an orange ground, being the international distinctive sign of civil defence;
 - (g) any of the distinctive signals specified in Protocol I, Annex I Chapter III, being the signals of identification for medical units and transports;
 - (h) 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;
 - (i) a design, wording or signal that so closely resembles an emblem, designation, sign or signal mentioned in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) that it is capable of being mistaken for, or understood as referring to, the emblem, designation, sign or signal;
 - (j) any other flag, emblem, designation, sign, signal, design, wording or insignia prescribed by regulation to be a protected emblem to give effect to a Convention or Protocol.
- (2) For this Act, a ***‘protected item’*** is an identity card, information card, uniform or other item prescribed by regulation to be a protected item to give effect to a Convention or Protocol.

6 Reservations and declarations

For this Act, if Nauru’s ratification of a Convention or Protocol is subject to a reservation or is accompanied by a declaration, the Convention or Protocol must be interpreted subject to the reservation or declaration.

PART 3 – BREACH OF CONVENTION OR PROTOCOL

7 Offence to breach Convention or Protocol

A person commits an offence if, in Nauru or elsewhere, the person:

- (a) commits a breach of a Convention or Protocol; or
- (b) aids, abets or procures another person to commit a breach of a Convention or Protocol.

Maximum penalty:

- (a) if the breach involves the wilful killing of a person – imprisonment for life; or
- (b) if the breach does not involve the wilful killing of a person but involves a grave breach – 14 years imprisonment;
- (c) in any other case – 7 years imprisonment.

8 Legal representation of defendant

- (1) A court must not proceed with a trial for an offence against section 7 unless:
 - (a) the defendant is represented by a lawyer; and
 - (b) the court is satisfied that instructions for the representation of the defendant at the trial were given to the lawyer at least 14 days before the date of trial.
- (2) If the court adjourns the trial to enable the requirements of subsection (1) to be complied with:
 - (a) the court may remand the defendant for the period of the adjournment; and
 - (b) the Republic must appoint a lawyer to represent the defendant:
 - (i) for all proceedings until the defendant appoints a lawyer; or
 - (ii) if the defendant does not appoint a lawyer – for all future proceedings in relation to the offence.

9 Proof of application of Convention or Protocol

In proceedings for an offence against section 7, a certificate of the Minister stating that specified circumstances exist and that a Convention or Protocol applies to those circumstances is, in the absence of proof to the contrary, proof of the matters stated in it.

PART 4 – LEGAL PROCEEDINGS RELATING TO PROTECTED PERSONS

10 Notice of trial

- (1) This section applies if:
 - (a) a protected prisoner of war is brought up for trial before a court for an offence; or
 - (b) a protected internee is brought up for trial before a court for an offence for which the maximum penalty is imprisonment for 2 years or more.
- (2) The court must not proceed with the trial until the court is satisfied that a notice containing the details specified in subsection (3) was given by the prosecution to each of the following persons at least 21 days before the date of trial:
 - (a) the Protecting Power for the protected person;
 - (b) the protected person and the representative for the protected person.
- (3) The notice must include the following details:
 - (a) the full name, date of birth and description of the protected person;
 - (b) the profession or trade of the protected person;
 - (c) for a protected prisoner of war – the prisoner's rank and army, regimental, personal and serial numbers;
 - (d) the protected person's place of detention, internment or residence;
 - (e) the offence with which the protected person is charged;
 - (f) the court before which the trial will take place and the time and place of the trial.
- (4) Unless the contrary is proved, a document is evidence that the notice was given to a person if the document purports:
 - (a) to be signed by:
 - (i) the person; or

- (ii) if the person is the Protecting Power – by a representative of the Protecting Power; and
- (b) to acknowledge receipt of the notice.
- (5) If the court adjourns the trial to enable the notice to be given, the court may remand the protected person for the period of the adjournment (but not for a period exceeding 3 months).

11 Legal representation of prisoner of war

- (1) This section applies if a protected prisoner of war is brought up for trial before a court for an offence.
- (2) The court must not proceed with the trial unless:
 - (a) the defendant is represented by a lawyer; and
 - (b) the court is satisfied that instructions for the representation of the defendant at the trial were given to the lawyer at least 14 days before the date of trial.
- (3) If the court adjourns the trial to enable the requirements of subsection (2) to be complied with:
 - (a) the court may remand the defendant for the period of the adjournment; and
 - (b) the Republic must appoint a lawyer to represent the defendant:
 - (i) for all proceedings until the defendant or the Protecting Power for the defendant appoints a lawyer to represent the defendant; or
 - (ii) if neither the defendant nor the Protecting Power appoints a lawyer – for all future proceedings in relation to the offence.

12 Appeal against conviction and sentence

- (1) If a protected person is convicted of an offence and sentenced to imprisonment for 2 years or more by a court, the Republic must give:
 - (a) the Protecting Power for the person notice of the conviction and sentence; and
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- (b) the protected person notice that the Protecting Power has been notified under paragraph (a).
- (2) This section does not apply if, at the time of the conviction or sentence, there is no Protecting Power for the protected person.

13 Deduction of time from sentence – protected person

- (1) This section applies if:
 - (a) a protected person is sentenced to imprisonment for an offence; and
 - (b) the protected person has spent time in custody in connection with the offence; and
 - (c) the court has not deducted the time the person has spent in custody from the amount of time the person must serve in prison under the sentence.
- (2) The Minister may direct that the time the person has spent in custody be deducted from the amount of time the person must serve in prison.

PART 5 – USE OF EMBLEMS

14 Consent to use or display of protected emblem or item

The Minister may, by Gazette notice, consent to the use or display of a protected emblem or protected item, but only to give effect to a Convention or Protocol.

15 Misuse of protected emblem or item

- (1) A person commits an offence if:
 - (a) the person uses or displays, for any purpose, a protected emblem or protected item; and
 - (b) the Minister has not consented to the use or display of the emblem or item under section 14.

Maximum penalty: \$10,000 or 12 months imprisonment

- (2) Subsection (1) applies to the use or display of the emblem or item outside Nauru on a Nauru registered aircraft or Nauruan ship.
- (3) Subsection (1) does not apply to the use or display of a registered trade mark only because it consists of or contains a protected emblem mentioned in section 5(1)(b), (c) or (d) or a design resembling such an emblem.

16 Forfeiture of item

If a court convicts a person of an offence against section 15, the court may also order the forfeiture to the Republic of any of the following:

- (a) anything on which a protected emblem was used or displayed in the commission of the offence;
- (b) a protected item used in the commission of the offence.

PART 6 – MISCELLANEOUS MATTERS

17 Prosecution for offence

A prosecution for an offence against this Act may be started only with the consent of the Minister.

18 Regulations

Cabinet may make regulations under this Act.