

ACT

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THE GENEVA CONVENTIONS ACT, 2012

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SIGNED this 3rd day of December, 2012.

DR. ERNEST BAI KOROMA,
President.



No. 14



2012

THE GENEVA CONVENTIONS ACT, 2012

Short title.

Being 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 8th June 1977 and for other related purposes.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act unless the context otherwise requires—

“Conventions” means

- (i) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field, done at Geneva on 12th August 1949;
- (ii) the Geneva Convention related to the Amelioration of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, done at Geneva on 12th August 1949;
- (iii) the Geneva Convention related to the Treatment of Prisoners of War, done at Geneva on 12th August 1949;
- (iv) the Geneva Convention related to the Protection of Civilian Persons in Time of war, done at Geneva on 12th August 1949;

“Minister” means the Minister responsible for foreign affairs;

“protected internee” means a person protected by the Fourth Convention or the First Protocol and interned in Sierra Leone;

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

“protecting power”, in relation to a protected prisoner of war or a protected internee, means the power or organization which is carrying out, in the interest 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, the Fourth Convention or the First Protocol, as the case may be;

“Protocols” means –

- (i) the Protocol, additional to the Geneva Conventions of 12th August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I) done on 10th June 1977;
- (ii) the Protocol, additional to the Geneva Conventions of 12th August 1949, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) done on 10th June 1977.

PART II—OFFENCES IN CONTRAVENTION OF THE CONVENTIONS AND PROTOCOL 1 AND OTHER RELATED MATTERS

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

Grave breaches of the Conventions and the First Protocol.

- (a) article 50 of the First Geneva Convention;
- (b) article 51 of the Second Geneva Convention;

- (c) article 130 of the Third Geneva Convention;
- (d) article 147 of the Fourth Geneva Convention;
- (e) paragraph 4 of article 11 or paragraph 2, 3, or 4 of Article 85 of the First Protocol.

(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 willful killing of a person protected by the relevant Convention or Protocol to imprisonment for life;
- (b) in the case of any other grave breach, to imprisonment for a term not less than 10 years and not exceeding twenty five years.

(3) A person who in Sierra Leone commits, abets, aids or procures any other person to commit a breach of the Conventions or Protocols not covered under subsection (1) commits an offence and is liable on conviction to imprisonment for a term not less than 10 years and not exceeding twenty five years.

(4) A citizen of Sierra Leone who outside Sierra Leone, commits or aids, abets or procures the commission by another person of a breach of any of the Conventions or Protocols not covered under subsection (1) commits an offence and is liable on conviction to imprisonment for a term not less than 10 years and not exceeding 25 years.

(5) Where a person commits an offence under this section outside Sierra Leone, that person may be tried and punished as if the offence was committed in Sierra Leone.

3. (1) The High Court shall have jurisdiction to try an offence committed under section 2. Jurisdiction of Courts.

(2) A court martial may try a person for an offence which under the Armed Forces of Sierra Leone Act is triable by that court although the offence is also an offence under section 2. Act No. 34 of 1961.

4. (1) A military commander or a person effectively acting as a military commander shall be responsible for an offence under section 2 committed by forces under his effective command and control if he fails to exercise such command and control over such forces where- Responsibility of commanders and other superiors.

- (a) he knew or owing to the circumstances at the time should have known that the forces were committing or about to commit such offence and
- (b) he failed to take all necessary and reasonable measures within his powers to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.

(2) A superior officer who does not fall under subsection (1) shall be responsible for an offence under section 2 committed by subordinates under his effective command and control if he fails to exercise such authority and control over his subordinates where-

- (a) he knew or consciously disregarded information which clearly indicated that the subordinates were committing or about to commit such offence;

- (b) the offence concerns activities that were within his command and control;
- (c) he failed to take necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) A person responsible under this section for an offence under section 2 shall, for the purposes of this Part be regarded as having aided, abetted, counseled or procured the commission of the offence, and is liable on conviction to imprisonment for a term not less than ten years and not exceeding 25 years.

PART III-LEGAL PROCEEDINGS

Notice of trial.

5. (1) A court shall not try a protected prisoner of war or a protected internee unless it 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 referred to in subsection (1) 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 person 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 protecting power, representative or accused person of the notice, shall be sufficient evidence that the notice required has been served on the protecting power, representative or accused person unless the contrary is proven.

(4) In this section the expression “prisoner's representative” in relation to a particular protected prisoner of war at a particular time, means 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 the time, detained as a protected prisoner of war.

6. 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. Adjournment.

Legal representative.

7. (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 legal practitioner ; 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 practitioner.

(2) Where the accused is a protected prisoner of war, in the absence of a 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 the requirements of paragraph (b) of subsection 1 be regarded for the purposes of that subsection as representing the accused.

(3) Where the court adjourns a trial because the accused person is not represented ,the court shall appoint a legal practitioner to represent the accused .

Appeal by a protected prisoner or a protected internee.

8. (1) Where a protected prisoner of war or a protected internee has been sentenced to imprisonment for a term of two years or more, the time within which that person must give notice of appeal or notice of application for leave to appeal to the Court of Appeal shall, notwithstanding anything to the contrary in any enactment be the period from the date of conviction, or in the case of an appeal against sentence, of sentencing, to the expiration of 10 days after the date on which the person receives a notice given-

- (a) in the case of a protected prisoner of war, by an officer of the Armed Forces; or

- (b) in the case of a protected internee by the officer in charge of the prison in which the protected internee is confined; that the protecting power has been notified of his conviction and sentence.

(2) Subsection (1) shall not apply if there was no protecting power at the time of the conviction or sentence.

(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 re-vesting of property shall not apply.

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

- (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 the 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 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 of war or a protected internee transferred to military custody shall be brought before the court at the time appointed by the remand or committal order.

PART IV – PREVENTION OF ABUSE OF RED CROSS AND OTHER EMBLEMS

Use of red cross and other emblems.

10. (1) Subject to this section, it shall not be lawful for any person, without the consent in writing of the Minister or a person authorized in writing by the Minister to give consent under this section to use or display for any purpose whatsoever 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) the 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) 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;

(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 the First Protocol, being the signals of identification for medical units and transports;

(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) any emblem or designation protected under any additional protocol to the Convention to which the Republic of Sierra Leone is a party;

(i) any design, wording or signal so nearly resembling any of the emblems, designations, signs or signals specified in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) 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;

- (j) such other flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms as are prescribed for the purposes of giving effect to the Conventions or Protocols.

(2) Nothing in subsection (1) shall prevent the use of the emblem and title of the Red Cross by the Sierra Leone Red Cross Society and its officers and members in accordance with the provisions of the Sierra Leone Red Cross Society Act, and any rules made under it.

(3) The Minister shall not give consent for the use of the emblems, signs or designations referred to under subsection (1) except to give effect to the Conventions or Protocols and may refuse or withdraw the consent.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty million leones or to imprisonment for a term not exceeding ten years or to both the fine and imprisonment.

(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 State, the goods in connection with which the emblem 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, connivance or that due diligence was exercised by that person to prevent the commission of the offence.

PART V—MISCELLANEOUS

11. (1) Subsection (1) of section 10 shall not apply to a trade ^{Savings.} mark registered in Sierra Leone before the 1st day of September 1959 because it consists of or contains a design or wording which reproduces or resembles an emblem or designation specified in paragraph (b) or (c) of subsection (1) of section 10.

(2) Where a person is charged with using a design prescribed in subsection (1) or wording for any purpose, and it is proved that he used it otherwise than as, or part of, a registered trade mark it shall be a defence to prove—

- (a) that he has lawfully used that design or wording in Sierra Leone for that purpose continuously before the 1st day of September 1959;
- (b) in a case where he is charged with using the design or wording on 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 has lawfully used the design or wording in Sierra Leone on similar goods continuously since before the 1st day of September 1959.

Regulations.

12. The Minister may 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 the purpose of giving effect to the Conventions or the Protocols or both ; and
- (d) provide for any other matter necessary for the effective implementation of this Act.

Passed in Parliament this *21st day of August*, in the year of our Lord two thousand and twelve.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.