

REPUBLIC OF VANUATU

BILL FOR

THE GENEVA CONVENTIONS ACT NO. OF 1982

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REPUBLIC OF VANUATU

BILL FOR

THE GENEVA CONVENTIONS ACT NO. OF 1982

For the ratification and enforcement of the provisions of the Geneva Conventions (1949).

Be it enacted by the President and Parliament as follows :

Part 1 - Preliminary

Interpretation

1. In this Act, unless the context otherwise requires :

"court" includes a Court Martial, a Disciplinary Court Martial or any Disciplinary Court convened or established in accordance with any law ;

"First Convention" means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces, adopted at Geneva on the twelfth of August 1949, the text of which is set out in Schedule 1 ;

"Fourth Convention" means the Geneva Convention relative to the Protection of Civilian Persons in time of war, adopted at Geneva on the twelfth of August 1949, the text of which is set out in Schedule 4 ;

"Geneva Conventions" means the First Convention, the Second Convention, the Third Convention and the Fourth Convention.

"Minister" means the Minister responsible for Foreign Affairs ;

"offence" means any act or omission that is an offence under the Penal Code Act No. 17 of 1981 or any other law or that is, by virtue of section 4, an offence under any such law ;

"prisoners representative" in relation to a protected prisoner of war means the person elected or recognised as that prisoner's representative pursuant to Article 79 of the Third Convention ;

"protected prisoner of war" means a prisoner of war who is protected by the Third Convention ;  
"protected internee" means a person interned in Vanuatu who is protected by the Fourth Convention ;  
"protecting power" means

- (a) in relation to a protected prisoner of war, the country or organization that is carrying out, in the interests of the country of which that prisoner is a national or of whose forces he is or was a member at the time of his being taken prisoner of war, the duties assigned to protecting powers under the Third Convention ;
- (b) in relation to a protected internee, the country or organization that is carrying out, in the interests of the country of which that internee is or was a national at the time of his internment, the duties assigned to protecting powers under the Fourth Convention ;

"Second Convention" means the Geneva Conventions for the Amelioration of the Condition of Wounded, Sick and Ship-wrecked Members of Armed Forces at Sea, adopted at Geneva on the twelfth of August 1949, the text of which is set out in Schedule 2 ;

"Third Convention" means the Geneva Convention relative to the Treatment of Prisoners of War adopted at Geneva on the twelfth of August 1949, the text of which is set out in Schedule 3 ;

Accession to  
the Geneva  
Conventions

2. The Minister is empowered on behalf of Vanuatu, to accede to the Geneva Conventions in the manner provided for in each of those Conventions.

Geneva  
Conventions  
ratified

3. (1) Subject to subsection (2), the Geneva Conventions are hereby ratified with effect from the day that accession thereto by Vanuatu shall take effect.
- (2) If the accession on behalf of Vanuatu to any of the Geneva Conventions is subject to a reservation or is accompanied by a declaration, that Convention shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

Part 2 - Grave Breaches of the Geneva Conventions

Grave  
Breaches

4. (1) Any grave breach of any of the Geneva Conventions that would, if committed in Vanuatu, be an offence under any provision of the Penal Code Act No. 17 of 1981 or any other law shall be an offence under such provision of the Penal Code or any other law if committed outside Vanuatu.
- (2) For the purposes of this section :
- (a) a grave breach of the First Convention is a breach as defined in Article 50 of that Convention
  - (b) a grave breach of the Second Convention is a breach as defined in Article 51 of that Convention;
  - (c) a grave breach of the Third Convention is a breach as defined in Article 130 of that Convention
  - (d) a grave breach of the Fourth Convention is a breach as defined in Article 147 of that Convention

Jurisdiction.

5. Where a person has committed an act or omission that is an offence by virtue of section 4, the offence is within the competence of and may be tried and punished by the court having jurisdiction in respect of similar offences in Vanuatu.

Consent.

6. No proceedings in respect of an act or omission that is an offence by virtue of section 4 shall be instituted without the consent in writing of the Public Prosecutor.

Part 3 - Legal Proceedings in respect of protected persons.

Notice of  
trial

7. (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 the court has power to sentence him to imprisonment for a term of two years or more,

shall not proceed with the trial until it is proved to the satisfaction of the court that written notice of the trial containing the particulars mentioned in subsection (2), so far as they are known to the prosecution, has been served on the accused and his protecting power, not less than three weeks before the commencement of the trial, and where the accused is a protected prisoner of war, to his prisoners' representative.

- (2) The notice referred to in subsection (1) shall state
- (a) the full name of the accused and a description of him, including the date of his birth, 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) the accused's place of detention, internment or residence;
- (c) the offence with which the accused is charged; and
- (d) the court before which the trial of the accused is to take place and the time and place appointed for the trial.

Time for appeal.

8. Where a protected prisoner of war or a protected internee has been sentenced by a court to imprisonment for a term of two years or more, the time allowed for an appeal against the conviction or sentence or against the decision of a court of appeal not to allow, to dismiss or quash the conviction or sentence shall run from the day on which the protecting power has been notified of the conviction and sentence by the Minister.

Reduction of sentence

9. When a protected prisoner of war or a protected internee is convicted of an offence, the court shall :
- (a) in fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and
  - (b) in fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

Legal representation

10. (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 the court has power to sentence him to imprisonment for a term of two years or more;
- shall not proceed with the trial unless :
- (i) the accused is represented by counsel; and

- (ii) it is proved to the satisfaction of the court that counsel had a period of not less than fourteen days before the opening of the trial to prepare the defence of the accused.
- (2) If the court adjourns the trial for the purpose of enabling the requirements of subsection (1) to be complied with, then, notwithstanding anything in any other law, the court may remand the accused for the period of the adjournment.
- (3) If the court adjourns the trial in accordance with subsection (1) (i), the court shall direct that a counsel be assigned to watch over the interest of the accused at any further proceedings in connection with the offence.
- (4) In the absence of counsel accepted by the accused as representing him, counsel assigned in accordance with subsection (3) shall, without prejudice to the requirements of subsection (1) (ii), be regarded as representing the accused.

Part 4 - Prevention of abuse of Red Cross and other Emblems

restrictions  
use of  
emblems

11. (1) No person shall, without the consent in writing of the Minister use for any purpose whatsoever any of the following emblems or designations :
- (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, which, appears above the lion's back, with the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun"; or
- (d) any design or wording so nearly resembling any of the emblems or designations aforementioned 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) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and on conviction shall be liable to a maximum fine of VATU 20,000 or imprisonment for a period not exceeding six months or both such fine and imprisonment.
- (3) The Minister shall not refuse to give consents under subsection (1) and shall not withdraw such consents, except for the purpose of giving effect to the provisions of the Geneva Conventions.
- (4) Where a person is convicted of an offence under subsection (2), the court may, in addition to any other penalty, order the forfeiture of any goods upon or in connection with which the emblem, designation, design or wording was used by that person.
- (5) No proceedings for an offence under subsection (2) shall be instituted without the consent in writing of the Public Prosecutor.

SCHEDULE

1. Geneva Convention for the amelioration of the conditions of the wounded and sick of armed forces in the field, of the 12th August, 1949.
2. Geneva Convention for the amelioration of the the wounded, sick and shipwrecked members of the armed forces at sea, of the 12th August, 1949.
3. Geneva Convention relative to the treatment of prisoners of war, of the 12th August, 1949.
4. Geneva Convention relative to the protection of civilian persons in time of war, of the 12th August, 1949.

REPUBLIC OF VANUATU

BILL FOR

THE GENEVA CONVENTIONS ACT NO. 22 OF 1982

EXPLANATORY NOTE

In order to form a National Red Cross Society, the Government of any country must accede to the four (4) Geneva Conventions of 1949:

1. Amelioration of the conditions of the wounded and sick of armed forces in the field.
2. Amelioration of the wounded, sick and shipwrecked members of the armed forces at sea.
3. Treatment of prisoners of war.
4. Protection of civilian persons in time of war.

In general, the effect of these Conventions is to protect persons or class of persons during "declared" wars between sovereign states and during partial or total occupation of the territory of a Contracting Party. But these Conventions also provide for the use of Red Cross Emblem in peace and in time of war. They also deal with the status of the International Committee of the Red Cross as an impartial humanitarian organization specially qualified by its tradition and experience.

The main purpose of this Bill is to empower the Prime Minister to accede to the four Geneva Conventions (section 2) and to ratify this accession (section 3).

Under various provisions of the Conventions, the country undertakes to enact necessary legislation to provide effective penal sanctions for persons committing any grave breaches of the Conventions as defined therein. Part 2 of the Bill deals with any grave breach of the Conventions which shall constitute an offence under our law, even if committed outside Vanuatu. Section 5 confers jurisdiction to our courts in respect of these offences but no proceedings may be instituted without the consent of the Public Prosecutor (section 6).

Part 3 of the Bill grants additional rights and protection regarding legal proceedings against persons protected by the Conventions. Under section 7, a notice of trial shall be served on the accused and his protecting power within a certain period. For the purposes of an appeal, the time allowed to lodge the appeal shall not run before proper notification of the conviction and sentence (section 8). When the court fixes a term of imprisonment, it shall consider any period during which the person was in custody for the offence. Finally, section 10 entitles a protected person to legal representation if charged with an offence.

Part 4 of the Bill restricts the use of various Red Cross emblems to persons who obtain the written consent of the Minister for Foreign Affairs. Offences are created for unauthorized use of emblems.

JULY 1982

WALTER H. LINI.  
PRIME MINISTER AND MINISTER  
FOR FOREIGN AFFAIRS.