

GENEVA CONVENTIONS ACT

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GENEVA CONVENTIONS ACT

An Act to enable effect to be given in the Federal Republic of Nigeria to certain international conventions done at Geneva on the twelfth day of August, nineteen hundred and forty-nine and for purposes connected therewith.

[1960 No. 54.]

[30th September, 1960]

[Commencement.]

1. **Short title and application**

This Act may be cited as the Geneva Conventions Act, and shall have effect as provided in section 12 of this Act.

1. **Interpretation**

(1) In this Act, the expression “**the Conventions**” means-

- (a) the First Geneva Convention, 1949;
- (b) the Second Geneva Convention 1949;
- (c) the Third Geneva Convention 1949; and
- (d) the Fourth Geneva Convention, 1949,

and such Conventions respectively mean the Convention done in each case at Geneva on the 12th day of August, 1949-

- (i) for the amelioration of the condition of the wounded and sick in armed forces in the field;
- (ii) for the amelioration of the condition of wounded, sick and shipwrecked members of the armed forces at sea;
- (iii) relative to the treatment of prisoners of war; and
- (iv) relative to the protection of civilians in time of war.

(2) In this Act, unless the context otherwise requires-

“protected internee” means a person protected by the Fourth Geneva Convention, 1949, and interned in Nigeria;

“protected prisoner of war” means a person protected by the Third Geneva Convention, 1949;

“protecting 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, the duties assigned to protecting powers under the Third or, as the case may be, Fourth Geneva Convention, 1949;

“solicitor” includes any legal practitioner having the right of audience before the Supreme Court.

Punishment of offenders against Conventions

1. Grave breaches of Conventions

(1) If, whether in or outside the Federal Republic of Nigeria, any person, whatever his nationality, commits, or aids, abets or procures any other person to commit any such grave breach of any of the Conventions as is referred to in the articles of the Conventions set out in the First Schedule of this Act, that is to say-

- (a) article 50 of the First Geneva Convention, 1949;
- (b) article 51 of the Second Geneva Convention, 1949;
- (c) article 130 of the Third Geneva Convention, 1949;
- (d) article 147 of the Fourth Geneva Convention, 1949,

[First Schedule.]

he shall on conviction thereof-

- (i) in the case of such a grave breach as aforesaid involving the wilful killing of a person protected by the Convention in question, be sentenced to death; and
- (ii) in the case of any other such grave breach, be liable to imprisonment for a term not exceeding fourteen years.

(2) A person may be proceeded against, tried and sentenced in the Federal Capital Territory, Abuja for an offence under this section committed outside Nigeria as if the offence had been committed in the Federal Capital Territory, Abuja and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in the Federal Capital Territory, Abuja.

(3) If, in proceedings under this section for a grave breach of any of the Conventions any question arises under article 2 of the relevant Convention (which relates in the case of each Convention to the circumstances in which the Convention applies and is set out in the Second Schedule to this Act), that question shall be determined by the Minister charged with responsibility for matters relating to defence and a certificate purporting to set out any such determination and to be signed by or on behalf of such Minister shall be received in evidence and deemed to be so signed without further proof, unless the contrary is shown.

[Second Schedule.]

1. Power to provide for punishment of other breaches of Conventions

(1) The President may, by order provide that if any person-

(a) in Nigeria commits, or aids, abets or procures any other person to commit, whether in or outside Nigeria; or

(b) being a citizen of Nigeria, or a member of, or attached or seconded to the armed forces of Nigeria, or a person to whom section 292 of the Armed Forces Act, applies, or a member of or serving with any voluntary aid society formed in Nigeria and recognised as such by the Federal Government, commits, whether in or outside Nigeria, or aids, abets or procures any other person to commit, whether in or outside Nigeria,

[Cap. A20.]

any breach of any of the Conventions which may be specified in the order other than one punishable under section 3 of this Act, he shall be liable to imprisonment for a term not exceeding seven years.

(2) A person may be proceeded against, tried and sentenced in the Federal Capital Territory, Abuja for an offence under an order made under this section committed outside Nigeria as if the offence had been committed in the Federal Capital Territory, Abuja and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in the Federal Capital Territory, Abuja.

Provisions as to certain legal proceedings

1. Notice of trial of protected persons to be served on protecting power

(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 an offence for which that court has power to sentence him to death or 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 a notice containing the particulars mentioned in subsection (2) of this section, so far as they are known to the prosecutor, has been served not less than the three weeks previously on the protecting power and, if the accused is a protected prisoner of war, on the accused and the prisoner's representative.

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

(a) the full name and description of the accused, including the date of his birth and 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) 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 purposes 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 section,

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) of this section was serviced on that power, representative or person on that day.

(4) In this section, "prisoner's representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoner's representative within the meaning of article 79 of the Third Geneva Convention, 1949, (which is set out in the Second Schedule to this Act) was exercisable in relation to that prisoner at the camp or place where that prisoner was, at or last before that time, detained as a protected prisoner of war.

[Second Schedule.]

(5) Notwithstanding anything in any other enactment, any court which adjourns a trial to enable the requirements of this section to be complied with may remand the accused for the period of the adjournment.

1. Legal representation of certain persons

(1) The court before which-

(a) any person is brought up for trial for an offence under section 3 or 4 of this Act; 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 a solicitor; and

(ii) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the solicitor representing the accused, 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 a solicitor accepted by the accused as representing him, a solicitor instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of subsection (1) of this section, be regarded for the purpose of that subsection as representing the accused.

(3) If the court adjourns the trial in pursuance of subsection (1) of this section by reason that the accused is not represented by a solicitor, the court shall direct that a solicitor be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceeding, in the absence of a solicitor either accepted by the accused as representing him or instructed as mentioned in subsection (2) of this section; a solicitor assigned in pursuance of this subsection shall, without prejudice to the requirements of paragraph (ii) of subsection (1) of this section, be regarded for the purposes of that subsection as representing the accused.

(4) A solicitor shall be assigned in pursuance of subsection (3) of this section, in such manner as may be provided by rules of court, which the Chief Judges of the respective States of the Federation and the Federal Capital Territory, Abuja are hereby severally empowered to make, and shall be entitled to be paid out of moneys provided by the National Assembly such sums in respect of fees and disbursements as the President may by regulations prescribe.

1. Appeals by protected persons

(1) Where a protected prisoner of war or a protected internee has been sentenced to death or to imprisonment for a term of two years or more, the time within which he must give notice of appeal to any other court in the Federation shall, notwithstanding anything in any other Act or any Law, be deemed to commence on the day on which he receives a notice given, in the

case of a prisoner of war of Commonwealth citizenship by an officer of his country's forces, and in the case of an internee by or on behalf of the superintendent in charge of the prison in which he is confined, that the relevant country has been notified of his conviction and sentence, or of the determination of his appeal, as the case may be.

(2) Nothing in subsection (1) of this section shall affect the power which any court may possess under any written law to enlarge the time within which an appeal may be brought.

(3) In any case to which subsection (1) of this section applies, the period of thirty days referred to in subsection (1) of section 22 of the Court of Appeal Act (which relates to the re-vesting and restitution of property on conviction), and any period prescribed for the like purpose in any other written law, shall be deemed to commence on the day on which the notice referred to in subsection (1) of this section is received.

[Cap. C36.]

(4) In this section-

(a) any reference to a notice of appeal includes a reference to a notice of application for leave to appeal;

(b) where an appeal lies from the court in which a case is tried to any other court, and from that other court to any further court or courts in Nigeria any reference to a notice of appeal, or to the determination of an appeal, includes a notice of appeal against any judgment or decision given by any court other than the Court of Appeal, whether at first instance or on appeal, or to the determination of an appeal by any court other than the Court of Appeal; and

(c) a reference to a person who has been sentenced to imprisonment for a term of two years or more includes reference to a person who, after the determination of any appeal, is ordered to be imprisoned for a term of two years or more.

1. Deferment of execution of sentence of death on prisoner of war

Where a prisoner of war has been sentenced to death by any court in Nigeria, the sentence shall not be carried out until at least six months after the date on which the protecting power receives a detailed communication containing-

(a) the precise wording of the finding and sentence; and

(b) a summarised report of any preliminary investigation and of the trial emphasising in particular the elements of the prosecution and the defence.

1. Reduction of sentence and custody of protected person

(1) 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, there shall be deducted from that term 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 to run, or is deemed to have begun to run.

(2) It shall be lawful for the President in a case where he is satisfied that a Commonwealth 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 three months, to direct that the prisoner shall be transferred from that custody to the custody of an officer of the armed forces of Nigeria and that he shall thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed by the remand or committal order.

Prevention of abuse of Red Cross and other emblems

10. Use of Red Cross and other emblems

(1) Subject to the provisions of this section, it shall not be lawful for any person, without the authority of the Minister charged with responsibility for matters relating to defence, 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's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun".

(2) Nothing in subsection (1) of this section shall prevent the use of the emblem and title of the Red Cross by the Nigerian Red Cross Society and its officers and members in accordance with the provisions of the Nigerian Red Cross Society Act, and any rules made thereunder.

(3) Subject to the provisions of this section, it shall not be lawful for any person, without the authority of the Minister charged with responsibility for matters relating to trade marks 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 emblems of the Swiss Confederation, or any other design so nearly resembling that 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) of this section as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

(4) If any person contravenes any of the provisions of subsections (1), (2) or (3) of this section he shall be liable on summary conviction to a fine not exceeding one hundred naira and to forfeit any goods upon or in connection with which the emblem, designation, design or wording was used.

(5) Any goods which cannot be used without a contravention of subsection (3) of this section shall be prohibited imports for the purposes of the customs laws.

(6) The provisions of subsections (1), (2), (3), (4) and (5) of this section shall not apply to a trade mark registered in Nigeria before the date on which this Act comes into operation by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in paragraph (b) or (c) of subsection (1) of this section and where a person is charged with using such design or wording for any purpose, and it is proved that he used it otherwise than as, or part of, a trade mark registered as aforesaid, it shall be a defence to prove-

(a) that he has lawfully used that design or wording in Nigeria for that purpose continuously since before the 1st day of September, 1959, on which date the Geneva Conventions Act, 1957, of the Parliament of the United Kingdom was made applicable to Nigeria; or

(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 Nigeria on similar goods continuously since before the 1st day of September, 1959.

(7) 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, manager, 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, shall be deemed to be guilty of the offence and 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 undertaking 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.

(8) It is hereby declared that this section extends to the use in or outside Nigeria of any such emblem, designation, design or wording as referred to in subsections (1) and (3) of this section on any British ship or aircraft registered in Nigeria.

Miscellaneous

11. Institution of proceedings and jurisdiction

(1) Proceedings for an offence under this Act or under an order made under this Act shall not be instituted except by or on behalf of the Attorney-General of the Federation.

(2) Notwithstanding anything in any other written law, neither a magistrate's court nor a court-martial convened under any enactment applicable to the members of the armed forces of Nigeria shall have jurisdiction to try any person for an offence under section 3 of this Act or under an order made under section 4 of this Act.

12. State application of certain sections

This Act shall apply throughout Nigeria, so however that the provisions of sections 5, 6 and 8 of this Act (which relate to notice of trial of certain persons) shall not have effect in a State unless and until the Governor of the State by notice in the *State Gazette* declares those provisions shall apply.

[L.N. 139 of 1965.]

13. Repeal

The enactments set out in the Third Schedule to this Act shall, to the extent to which this Act applies to the Federal Republic of Nigeria, cease to have effect in Nigeria.

[Third Schedule. L.N. 139 of 1965.]

SCHEDULES

FIRST SCHEDULE

[Section 3 (1).]

Articles of the Conventions defining grave breaches of the Conventions and providing for the trial of persons alleged to have committed such breaches

1. Article 49 of the First Geneva Convention, 1949,
Article 50 of the Second Geneva Convention, 1949,
Article 129 of the Third Geneva Convention, 1949,
Article 146 of the Fourth Geneva Convention 1949.

(the texts of all four articles being identical save as stated below)-

“The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the treatment of Prisoners of War of August 12, 1949.”

(Note: In the Third Geneva Convention, 1949, the words “the present Convention” are used in place of the words “the Geneva Convention relative to the treatment of Prisoners of War of August 12, 1949”).

2. *Article 50 of the First Geneva Convention, 1949.*-Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully 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 wantonly.

3. Article 51 of the Second Geneva Convention, 1949.-Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully 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 wantonly.

4. Article 130 of the Third Geneva Convention, 1949.-Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

5. Article 147 of the Fourth Geneva Convention, 1949.-Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person compelling a protected person to serve in the forces of a hostile power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

SECOND SCHEDULE

[Sections 3 (3) and 5 (4).]

Certain other Articles of the Conventions referred to in this Act

1. Application of the Conventions.-In each of the Conventions Article 2 lays down the application of the Convention, and reads as follows-

“In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of War is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall

furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

Election

2. Prisoners' Representatives Article 79 of the Third Geneva Convention, 1949.-In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organisation which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognised as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

THIRD SCHEDULE

[Section 13.]

Enactments repealed

Geneva Convention Act, 1911. 1 and 2 Geo. 5, c. 20.

Geneva Convention Act, 1911 (Colonies) Order in Council, 1917.

British Protectorates (Geneva Convention) Order in Council, 1917.

Geneva Convention Act, 1937.1 Edw. 8 and Geo. 6, c. 15.

Geneva Convention Act, 1937 (Colonies) Order in Council, 1937.

British Protectorates (Geneva Convention) Order in Council, 1937.

Geneva Conventions, 1906 and 1929 (Mandated Territories) Order in Council, 1937.

Geneva Conventions Act, 1957 (5 and 6 Eliz. 2, c. 52).

GENEVA CONVENTIONS ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation