

Namibia

## Geneva Conventions Act, 2003

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Republic of Namibia  
**Annotated Statutes**

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## Geneva Conventions Act, 2003

### Act 15 of 2003

Published in [Government Gazette no. 3109](#) on 18 December 2003

**Assented to on 28 November 2003**

**Commenced on 1 October 2004 by [Government Notice 207 of 2004](#)**

*[Up to date as at 14 July 2020]*

ACT

**To give effect to certain Conventions done at Geneva on 12 August 1949 and to certain Protocols additional to those Conventions done at Geneva on 10 June 1977; and to provide for matters relating thereto.**

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

### 1. Definitions

In this Act, unless the context otherwise indicates -

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

“**court**” does not include a court martial or other military court;

“**First Convention**” means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva on 12 August 1949, the text of which Convention is set out in Schedule 1;

“**Fourth Convention**” means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, done at Geneva on 12 August 1949, the text of which Convention is set out in Schedule 4;

“**protected internee**” means a person protected by the Fourth Convention (including a person so protected by virtue of Protocol I) and interned in Namibia;

“**protected prisoner of war**” means a person protected by the Third Convention or a person who is a prisoner of war for the purposes of Protocol I;

“**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 interests of the power of which such prisoner or internee is a national, or of whose forces such prisoner or internee is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention, the Fourth Convention or Protocol I, as the case may be;

“**Protocol I**” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), done at Geneva on 10 June 1977, the text of which Protocol is set out in Schedule 5;

*[This should be “Protocol I”, with a Roman numeral.]*

“**Protocol II**” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 10 June 1977, the text of which Protocol is set out in Schedule 6;

“**Second Convention**” means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva on 12 August 1949, the text of which Convention is set out in Schedule 2;

“**Third Convention**” means the Geneva Convention relative to the Treatment of Prisoners of War, done at Geneva on 12 August 1949, the text of which Convention is set out in Schedule 3.

## 2. Punishment of grave breaches of Conventions and Protocol I

- (1) Any person who, in Namibia or elsewhere, commits, or aids, abets or procures the commission by another person of, a grave breach of any of the Conventions or of Protocol I is guilty of an offence.
- (2) For the purposes of subsection (1) -
  - (a) a grave breach of the First Convention is a breach of that Convention involving any act referred to in Article 50 of that Convention committed against persons or property protected by that Convention;
  - (b) a grave breach of the Second Convention is a breach of that Convention involving any act referred to in Article 51 of that Convention committed against persons or property protected by that Convention;
  - (c) a grave breach of the Third Convention is a breach of that Convention involving any act referred to in Article 130 of that Convention committed against persons or property protected by that Convention;
  - (d) a grave breach of the Fourth Convention is a breach of that Convention involving any act referred to in Article 147 of that Convention committed against persons or property protected by that Convention; and
  - (e) a grave breach of Protocol I is a breach of that Protocol involving -
    - (i) any act or omission referred to in paragraph 4 of Article 11 of that Protocol; or
    - (ii) any act referred to in paragraph 2 of Article 85 of that Protocol committed against persons or property referred to in that paragraph; or
    - (iii) any act referred to in paragraph 3 of Article 85 of that Protocol; or
    - (iv) any act referred to in paragraph 4 of Article 85 of that Protocol.
- (3) This section applies to all persons, irrespective of their nationality or citizenship.
- (4) Any person who is found guilty of an offence under this section is, subject to subsection (5), liable -
  - (a) in the case where the offence involves the willful killing of a person protected by the relevant Convention or by Protocol I, to imprisonment for life;

*[The spelling used in the Convention itself is "wilful".]*

- (b) in any other case, to imprisonment for a period not exceeding 14 years.
- (5) If a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in subsection (4)(a), it must enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.
- (6) No person may be prosecuted under this section except with the written authority of the Prosecutor-General.
- (7) The provisions of section 5 (other than subsection (2) thereof) apply in relation to the trial of a person for an offence under this section in like manner as they apply in relation to the trial of a protected prisoner of war.

### **3. Court may determine whether person is a protected prisoner of war**

- (1) A person referred to in paragraph 1 or 2 of Article 45 of Protocol I may apply to the High Court of Namibia for a declaration that he or she has the status of a protected prisoner of war.
- (2) The jurisdiction of the High Court for the purposes of this section is constituted by a single judge.
- (3) Subject to subsection (4), the jurisdiction of the High Court for the purposes of this section must be exercised in open court.
- (4) The High Court may, to the extent authorized thereto by the provisos to Article 12(1)(a) and (c) of the Namibian Constitution, direct that the public or any person whose presence is not necessary at the hearing of an application under subsection (1), may not be present at such hearing.

### **4. Notice of trial of protected prisoners of war and internees to be served on protecting power and others**

- (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 trial for an offence for which that court has power to sentence him or her to imprisonment for a term of two years or more,

may 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), so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power (if there is a protecting power) and, if the accused is a protected prisoner of war, on the accused and the prisoner's representative.
- (2) The particulars contemplated in subsection (1) are -
  - (a) the full name, date of birth and description of the protected prisoner of war or protected internee who is brought up for trial, including his or her profession or trade (if any), and, if the accused is a protected prisoner of war, his or her rank and his or her army, regimental, personal or serial number;
  - (b) the place of detention, internment or residence;
  - (c) the offence with which such prisoner or internee 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 prisoner's representative or by the person accused, as the case may be; and

- (b) to be an acknowledgment of the receipt by such power, representative or person on a specified date of a notice described in the document as a notice under this section,

is, unless the contrary is shown, sufficient evidence that the notice required by subsection (1) was served on such power, representative or person on that date.

- (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 prisoners’ representative within the meaning of Article 79 of the Third Convention were exercisable in relation to such prisoner at the camp or place at which such prisoner was, at or last before that time, detained as a protected prisoner of war.
- (5) A court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything to the contrary in any other law contained, remand the accused for the period of the adjournment.

## 5. Legal representation of prisoners of war

- (1) The court before which a protected prisoner of war (in this section referred to as an accused) is brought up for trial for an offence may not proceed with the trial unless -
- (a) the accused is represented by a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995); and
- (b) it is proved to the satisfaction of the court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to the legal practitioner who is 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 to the contrary in any other law contained, the court may remand the accused for the period of the adjournment.

- (2) In the absence of a legal practitioner accepted by an accused as representing him or her, the legal practitioner instructed for that purpose on behalf of the protecting power is, without prejudice to the requirements of paragraph (b) of subsection (1), regarded for the purposes of that subsection as representing the accused.
- (3) If the court adjourns a trial in terms of subsection (1) by reason that the accused is not represented by a legal practitioner, the court must direct that a legal practitioner be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of a legal practitioner either accepted by the accused as representing him or her or instructed as mentioned in subsection (2), the legal practitioner assigned in terms of this subsection is, without prejudice to the requirements of paragraph (b) of subsection (1), regarded for the purposes of the last-mentioned subsection as representing the accused.
- (4) The Legal Aid Act, 1990 (Act No. 29 of 1990), applies with the necessary changes in relation to the manner in which a legal practitioner must be assigned in terms of this section and in relation to the remuneration payable to any such legal practitioner on the completion of his or her duties.

## 6. Appeals by protected prisoners of war and internees

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 allowed within which such prisoner or internee may give notice of appeal or notice of his or her application for leave to appeal to the High Court or the Supreme Court of Namibia, as the case may be, must, notwithstanding anything to the contrary in any other law contained, be not less than the period extending from the date of his or her conviction or, in the case of an appeal against sentence, of his or her sentence to the expiration of 10 days after the date on which he or she receives a notice in writing given by the officer or other person in charge of the prison or place in which he or she is confined or interned that the protecting power has been notified of his or her conviction and sentence.

## 7. Reduction of sentence and custody for protected prisoners of war and internees

- (1) Notwithstanding anything to the contrary in any other law contained, when a protected prisoner of war or a protected internee is convicted of an offence and sentenced to a term of imprisonment, the court must, in fixing the 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 was in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), before the day on which the sentence imposed on the convicted person takes effect.
- (2) The Minister of Justice may, where he or she is satisfied that a protected 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), in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than three months, direct that such prisoner must be transferred from that custody to the custody of an officer of the Namibian Defence Force and 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.

*[The word "satisfied" is misspelt in the Government Gazette, as reproduced above.]*

## 8. Prevention of abuse of Red Cross and other emblems, signs, signals, identity cards, insignia and uniforms

- (1) Subject to subsection (5) of this section and section 3(1) of the Namibia Red Cross Act, 1991 (Act No. 16 of 1991), no person may, without the prior written consent of the Minister of Health and Social Services or of any other person authorized in writing by the said Minister to give such consent, use 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 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";
  - (d) 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, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem;
  - (e) a design or wording so nearly resembling any of the emblems or designations specified in paragraphs (a), (b), (c) and (d) as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems;
  - (f) such other emblems, signs, signals, identity cards, insignia or uniforms as are prescribed by regulation for the purpose of giving effect to the provisions of Protocol I.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months.
- (3) The Minister of Health and Social Services or any authorized person referred to in subsection (1) may not refuse to give any consent under that subsection, and may not withdraw any such consent, except for the purpose of giving effect to the provisions of the Conventions or of Protocol I.
- (4) Where a court convicts a person of an offence under subsection (1), the court may, in addition to any sentence which it may impose on the convicted person in respect of the offence, order the forfeiture to the State of -

- (a) any goods or other article upon or in connection with which the particular emblem, designation, design, wording, sign or signal was used by the convicted person; and
  - (b) any identity cards, insignia or uniforms used for the purpose of or in connection with the commission of the offence.
- (5) In the case of a trade mark registered before the date of commencement of this Act, subsections (1), (2) and (3) do not apply by reason only of the trade mark consisting of or containing an emblem or designation specified in paragraph (b) or (c) of subsection (1) or a design or wording resembling such an emblem or designation, and where a person is charged with using such an emblem, designation, design or wording for any purpose and it is proved that the person charged used it otherwise than as, or as part of, a trade mark so registered, it constitutes a sufficient defence to prove -
- (a) that the person charged lawfully used that emblem, designation, design or wording for that purpose before the date of commencement of this Act; or
  - (b) if the person is charged with using such an emblem, designation, design or wording upon goods, that that emblem, designation, design or wording had been applied to the goods before the person charged acquired them from some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used that emblem, designation, design or wording upon similar goods before the date of commencement of this Act.
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer of the body corporate, or a person acting or purporting to act in any such capacity, such director, manager, secretary, officer or other person, as well as the body corporate, is deemed to have committed the offence and is liable to be proceeded against and punished accordingly.
- (7) This section extends to the use in or outside Namibia of an emblem, designation, design, wording, sign, signal, identity card, insignia or uniform referred to in subsection (1) on any ship or aircraft registered in Namibia.
- (8) No prosecution for an offence under this section may be instituted without the written authority of the Prosecutor-General.

## 9. Regulations

The Minister of Defence may make regulations, not inconsistent with this Act, prescribing matters -

- (a) regulating the use for the purposes of any of the Conventions to this Act or of Protocol I or Protocol II of any emblem, designation, sign or signal;
- (b) required or permitted by this Act to be prescribed; and
- (c) necessary or expedient to be prescribed for carrying out or giving effect to the provisions of this Act.

## 10. Short title and commencement

This Act is called the Geneva Conventions Act, 2003, and comes into operation on a date to be fixed by the Minister of Defence by notice in the Gazette.

*[The Schedules omit the Preambles to all of the Conventions, although the Preambles to the Protocols are included. The Government Gazette does not follow the formatting of the Conventions. For paragraphs, the Conventions use numbers in brackets rather than numbers followed by a full stop (for example, "(1)" instead of "1."); the Government Gazette is inconsistent on this point. . The Conventions also italicise subparagraph letters (for example, "(a)"), whereas the GovernmentGazette does not. ]*

*[The Conventions use typical American format for dates (for example, August 12, 1949), while the Protocols use typical British format (for example, 12 August 1949). The GovernmentGazette uses the British format for dates throughout the Conventions and the Protocols.]*

*[The Conventions use commas in numbers which are larger than hundreds (for example, “2,000”) whereas the Government Gazette uses a space rather than a comma (for example, “2 000”).]*

*[The formatting of the Government Gazette is reproduced here.]*

*[The Swiss Federal Council (ie the Swiss government) is the depository for the Geneva Conventions. The original texts of the Conventions and Protocols were sourced on the website of the Swiss Department of Foreign Affairs. See <a href="https://www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droit-international-public/traites-internationaux/depositaire/protection-des-victimes-de-la-guerre.html">https://www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droit-international-public/traites-internationaux/depositaire/protection-des-victimes-de-la-guerre.html</a>; clicking on the links to the individual conventions or protocols will provide the option of downloading the treaty in French or English (“Anglais”).]*

## **Schedule 1 FIRST CONVENTION**

### **Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949**

*[The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 is included as a schedule to this Act and is available from the United Nations website at [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.30\\_GC-I-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.30_GC-I-EN.pdf)]*

## **Schedule 2 SECOND CONVENTION**

### **Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949**

*[The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 is included as a schedule to this Act and is available from the United Nations website at [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.31\\_GC-II-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.31_GC-II-EN.pdf)]*

## **Schedule 3 THIRD CONVENTION**

### **Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949**

*[The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 is included as a schedule to this Act and is available from the United Nations website at [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32\\_GC-III-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf)]*

## **Schedule 4 FOURTH CONVENTION**

### **Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949**

*[The Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is included as a schedule to this Act and is available from the United Nations website at [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33\\_GC-IV-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf)]*

## **Schedule 5 PROTOCOL I**

### **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 10 June 1977**

*[The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) is included as a schedule to this Act and is available from the United Nations website at [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.34\\_AP-I-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.34_AP-I-EN.pdf)]*

## **Schedule 6 PROTOCOL II**

**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 10 June 1977**

*[The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 10 June 1977 is included as a schedule to this Act and is available from the United Nations website at [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.35\\_AP-II-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.35_AP-II-EN.pdf)]*