



Tuvalu

**TUVALU RED CROSS SOCIETY AND
GENEVA CONVENTIONS ACT**

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CAP 28.48



Tuvalu

TUVALU RED CROSS SOCIETY AND GENEVA CONVENTIONS ACT

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Tuvalu

TUVALU RED CROSS SOCIETY AND GENEVA CONVENTIONS ACT¹

AN ACT TO RECOGNISE THE TUVALU RED CROSS SOCIETY AND FOR RELATED PURPOSES

Commencement [24th December, 2013]

PART I - SHORT TITLE AND DEFINITIONS

1 Short Title

This Act may be cited as the Tuvalu Red Cross Society and Geneva Conventions Act.

2 Definitions

In this Act, unless a contrary intention appears —

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

“**the First Convention**” means 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, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 1;

“**the Second Convention**” means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annex to that Convention) is set out in Schedule 2;

“**the Third Convention**” means the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 3;

“**the Fourth Convention**” means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 4;

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

“**prisoners’ 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 that prisoner was, at or last before that time, detained as a protected prisoner of war;

“**protected internee**” means a person protected by the Fourth Convention or Protocol I, and interned in Tuvalu;

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

“**the 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 he or she is a national, or of whose forces he or she 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 I), done at Geneva on 8 June 1977, a copy of which Protocol (including Annex 1 to that Protocol) is set out in Schedule 5;

“**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 8 June 1977, a copy of which Protocol is set out in Schedule 6;

“**Protocol III**” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005, a copy of which Protocol is set out in Schedule 7;

“**the Protocols**” means Protocol I, Protocol II and Protocol III.

“**statutes**” means the statutes made under section 8;

“**Scheduled Conventions**” means the conventions specified in the Schedule;

“**the Society**” means the Tuvalu Red Cross Society.

PART II - THE SOCIETY

3 The Society

- (1) The Society is a voluntary aid society, auxiliary to the public authorities in the humanitarian field, recognised and authorised on the basis of the Geneva Conventions (and their Additional Protocols) to render assistance to the medical services of the armed forces in times of armed conflict.
- (2) The Society is the only National Society of the Red Cross or Red Crescent in the Independent State of Tuvalu. It carries out its activities on the entire territory of Independent State of Tuvalu.
- (3) The Society shall at all times act in conformity with the Geneva Conventions (and their Additional Protocols), the laws of the Independent State of Tuvalu and the Fundamental Principles of the International Red Cross and Red Crescent Movement adopted by the International Conference of the Red Cross and Red Crescent.
- (4) The public authorities shall at all times respect the adherence by the Society to the Fundamental Principles of the International Red Cross and Red Crescent Movement as required by resolution 55(I) of the General Assembly of the United Nations.

4 Legal personality of the Society

- (1) The Society is a corporate body with legal personality under the name of the Tuvalu Red Cross Society.
- (2) The Society has perpetual succession and a common seal, with power to sue and be sued, and to enter into any such contracts as it may consider to be necessary or expedient for the purpose of performing its functions or achieving its objects under this Act.
- (3) The Society shall at all times act in accordance with its Constitution adopted by the Governing Board of the Society.

5 Object of Society

- (1) The objects of the Society shall be over the whole territory of Tuvalu —
 - (a) to furnish volunteer aid to the sick and wounded in time of war and to non-belligerents and to prisoners of war and civilian sufferers from the effects of war; and
 - (b) in the case of catastrophes or public disasters, to provide the victims thereof with relief; and

- (c) in time of peace or war to carry on and assist in the work for the improvement of health, the prevention of diseases and the mitigation of suffering in Tuvalu and throughout the world; and
 - (d) to promote the Junior Red Cross movement among the youth of all races; and
 - (e) to propagate the ideals and the humanitarian principles of the Red Cross with a view to developing a feeling of solidarity and mutual understanding among all men and nations; and
 - (f) to adhere to the Statutes of the International Red Cross and Red Crescent Movement sharing in the Fellowship which includes its members, the National Societies and the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies and to keep in close touch with them.
- (2) In pursuing the objects referred to in subsection (1) of this section the Society shall not make any adverse distinction founded on sex, race, nationality, religion or faith, political opinions or any other similar criteria.
 - (3) In order to achieve its object as defined in subsection(1) of this section, the Society shall carry out the functions as defined in its statutes, international treaties to which the Independent State of Tuvalu is a party and the resolutions of the International Conference of the Red Cross and Red Crescent.
 - (4) The Society shall comply with its duties as a component of the International Red Cross and Red Crescent Movement and as a member of the International Federation of Red Cross and Red Crescent Societies.

6 Funding and assets

- (1) The Society, within the limits laid down by its object and functions, may acquire, own, alienate and administer such property as it deems fit. It may accept any conveyance of real estate to its use or benefit.
- (2) The Society may, in accordance with its object and functions, accept unrestricted contributions and assistance in any form from individuals, the public authorities and private or public bodies. It may accept as agent or trustee funds or property in trust or earmarked for particular use, provided that such use is within the general scope of its object and functions.
- (3) The Society may constitute and administer any reserve, insurance or other funds for its staff or any of its activities.
- (4) The assets of the Society, including its financial resources and real estate as well as the revenue from its income generating activities, shall be exempted from all taxes and duties.
- (5) Donations made to the Society by any individual or legal body shall benefit from tax exemption.

- (6) The public authorities shall make provisions for covering the cost of any service or activity which they may entrust to the Society within the scope of the Society's object and functions. The conditions for the implementation of such services or activities shall be laid down in agreements between the Society and the relevant public authority.

7 Statutes

- (1) The Governing Board shall as soon as possible after the coming into operation of this Act frame and establish a Constitution being statutes for the management of the affairs of the Society and the accomplishment to its objects. Such constitution should, inter alia, provide —
 - (a) that membership of the Society shall not be withheld from any citizen of Tuvalu on the grounds of race, class, sex, religion or faith or political opinions;
 - (b) that all members and associates of the Society shall have representation on the Governing Board.
- (2) Statutes made under this section may from time to time be altered, added to or repealed by the Governing Board, and new statutes may from time to time be made in like manner.
- (3) Statutes made under this section need not be published in the Gazette.

PART III - THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOLS

8 Punishment of grave breaches of the Conventions and Protocol I

- (1) Any person, whatever his or her nationality, who, in Independent State of Tuvalu or elsewhere, commits, or aids, abets or procures any other person to commit, a grave breach of any of the Conventions, of Protocol I or of Protocol III, is guilty of an indictable offence.
- (2) For the purposes of this section:
 - (a) a grave breach of the First Convention is a breach of that Convention involving an 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 an 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 an 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 an act referred to in Article 147 of that Convention committed against persons or property protected by that Convention;
 - (e) a grave breach of Protocol I is anything referred to as a grave breach of the Protocol in paragraph 4 of Article 11, or paragraph 2, 3 or 4 of Article 85, of the Protocol; and
 - (f) a grave breach of Protocol III is any misuse of the third Protocol emblem amounting to perfidious use in the meaning of Article 85 paragraph 3 f) of Protocol I.
- (3) In the case of an offence against this section committed outside Tuvalu, a person may be proceeded against, indicted, tried and punished therefor in any place in Tuvalu as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

9 Punishment of other breaches of the Conventions and Protocols

- (1) Any person, whatever his or her nationality, who, in the Independent State of Tuvalu, commits, or aids, abets or procures any other person to commit, a breach of any of the Conventions or Protocols not covered by section 8, is guilty of an indictable offence.
- (2) Any national of Tuvalu who, outside Tuvalu, commits, or aids, abets or procures the commission by another person of a breach of any of the Conventions or Protocols not covered by section 8 is guilty of an indictable offence.

10 Penalties and procedure

- (1) The punishment for an offence against section 8 or section 9 is:
 - (a) where the offence involves the wilful killing of a person protected by the relevant Convention or by Protocol I – imprisonment for life or for any lesser term; and
 - (b) in any other case – imprisonment for a term not exceeding 14 years.
- (2) An offence against section 8 or section 9 shall not be prosecuted in a court except by indictment by or on behalf of the Attorney-General.

11 Proof of application of the Conventions or Protocols

If, in proceedings under this Part in respect of a breach of any of the Conventions or of either of the Protocols, a question arises under:

- (a) Article 2 or Article 3 of that Convention (which relate to the circumstances in which the Convention applies);

- (b) Article 1 or Article 3 of Protocol I (which relate to the circumstances in which that Protocol applies); or
- (c) Article 1 of Protocol II (which relates to the circumstances in which that Protocol applies);
- (d) Article 1 of Protocol III (which relates to the circumstances in which that Protocol applies);

a certificate under the hand of the Minister certifying to any matter relevant to that question is prima facie evidence of the matter so certified.

12 Jurisdiction of courts

- (1) A person shall not be tried for an offence against section 8 or section 9 by a court other than the Independent State of Tuvalu.
- (2) The enactments relating to the trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts-martial convened in the Independent State of Tuvalu as if this Part had not been passed.

13 Use of red cross, red crescent and other emblems, etc.

- (1) Subject to the provisions of this section, it shall not be lawful for any person, without the consent in writing of the Attorney-General, 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) the emblem in red on, and completely surrounded by, a white ground, that is to say, a red frame in the shape of a square on edge (whether or not incorporating within its centre another emblem or sign or combination thereof in accordance with Article 3, paragraph 1 of Additional Protocol III), 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 Chapter III of Annex I to Protocol I, 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 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 purpose of giving effect to the Conventions or Protocols.
- (2) The Attorney-General shall not give such consent except for the purpose of giving effect to the provisions of the Conventions or Protocols and may refuse or withdraw such consent as necessary.
- (3) This section extends to the use in or outside Tuvalu of an emblem, designation, sign, signal, design, wording, identity card, identification cards, insignia or uniform referred to in subsection (1) on any ship or aircraft registered in Tuvalu.

14 Society Use of Emblem

Notwithstanding section 13, the Society shall be authorised to use as its emblem a red cross on a white ground for all the purposes foreseen by the International Conference of the Red Cross and Red Crescent, in conformity with the Conventions, the present law and the Regulations on The Use of The Emblem by National Societies adopted by the International Conference of the Red Cross and Red Crescent.

15 Offences and penalties

- (1) Any person who contravenes section 12(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or both.
- (2) Where a court convicts a person of an offence against section 12(1), the court may order the forfeiture to the State of:

- (a) any goods or other article upon of in connection with which an emblem, designation, sign, signal, design or wording was used by that person; and
 - (b) any identity cards, identification cards, insignia or uniforms used in the commission of the offence.
- (3) Where an offence against section 13(1) 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 purporting to act in any such capacity, he or she, 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.
- (4) Proceedings under section 13(1) shall not be instituted without the consent in writing of the Attorney-General.

16 Saving

In the case of a trade mark registered before the passing of this Act, sections 13 and 15 do not apply by reason only of its consisting of or containing an emblem specified in subparagraph 12(1) (b), (c) or (d) or a design resembling such an emblem, and where a person is charged with using such an emblem, sign or design for any purpose and it is proved that the person used it otherwise than as, or as part of, a trade mark so registered, it is a defence for the person to prove:

- (a) that the person lawfully used that emblem, sign or design for that purpose before the passing of this Act; or
- (b) in a case where the person is charged with using the emblem, sign or design upon goods or any other article, that the emblem, sign or design had been applied to the goods or that article before the person acquired them or it by some other person who had manufactured or dealt with them in the course of trade and who lawfully used the emblem, sign or design upon similar goods or articles before the passing of this Act.

17 Regulations

The Minister may make regulations:

- (a) prescribing the form of flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms for use for the purposes of giving effect to the Conventions or the Protocols or both, and regulating their use;
- (b) prescribing the penalty that may be imposed in respect of contravention of, or non-compliance with, any regulations made under paragraph (a) of this section, which may be a fine not exceeding \$1,000 or imprisonment for a term not exceeding three months or both; and

- (c) providing for such other matters as are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

18 Repeal of Act

The Tuvalu Red Cross Society Act 1981 is hereby repealed.

SCHEDULE

- 1 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;
- 2 The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949;
- 3 The Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949;
- 4 The Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949;
- 5 The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 8 June 1977;
- 6 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 8 June 1977;
- 7 The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005.
- 8 Resolution 1 of the 29th International Conference of the Red Cross and Red Crescent (Geneva 20 – 21 June 2006)

ENDNOTES

¹ Act 5 of 2013