

I assent,

Beretitenti
Assented: 21st May 2010

AN ACT TO AMEND THE *GENEVA CONVENTIONS ACT 1993*

Commencement:
2010

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

1. Short title

This Act may be cited as the *Geneva Conventions (Amendment) Act 2010*.

2. Meaning of ‘principal Act’

In this Act ‘principal Act’ means the *Geneva Conventions Act 1993*.

3. Amendment of section 2

Section 2 of the principal Act is amended—

- (a) in the definition of ‘court’, by inserting at the end thereof the words “or other military court”;
- (b) in the definition of ‘protected internee’, by inserting after the word “Convention” the words “or Protocol I”;
- (c) in the definition of ‘protected prisoner of war’, by inserting at the end thereof the words “or a person who is protected as a prisoner of war under Protocol I”;
- (d) by repealing the definition of ‘the protected Power’; and

(e) by inserting the following definitions—

“act’ means an act or an omission;

‘the 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 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 Geneva Convention, the Fourth Geneva 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*, done at Geneva on 8 June 1977;

‘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*, done at Geneva on 8 June 1977; and

‘Protocol III’ means the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem*, done at Geneva on 8 December 2005; and

‘Protocols’ means Protocol I, Protocol II and Protocol III.”.

4. Amendment of part heading before section 3

The part heading, which appears before section 3 of the principal Act, is amended by inserting at the end thereof the words “and Protocols”.

5. Amendment of section 3

Section 3 of the principal Act is amended—

(a) in the section heading, by inserting at the end thereof the words “and Protocols I and III”;

- (b) in subsection (1)—
 - (i) by inserting after the word “Conventions”, where it occurs for the second time, the words “, Protocol I or Protocol III”; and
 - (ii) by inserting after the word “Conventions”, where it occurs for the third time, the words “or Protocols”;
 - (iii) by inserting after sub—paragraph (iv) of paragraph (b) the following sub—paragraphs—
 - “(v) if committed wilfully against persons protected under Protocol I who are in the power of a Party other than the one on which he or she depends and if they seriously endanger the physical or mental health or integrity of such a person—
 - (aa) any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standard which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty;
 - (bb) physical mutilations;
 - (cc) medical or scientific experiments;
 - (dd) removal of tissue or organs for transplantation;
 - (vi) if committed wilfully in violation of the relevant provisions of Protocol I and causing death or serious injury to body or health—
 - (aa) making the civilian population or individual civilians an object of attack;
 - (bb) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss

- of life, injury to civilians or damage to civilian objects;
- (cc) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
 - (dd) making non—defended localities and demilitarised zones the object of attack;
 - (ee) making a person the object of an attack in the knowledge that he or she is hors de combat;
 - (ff) perfidiously using the distinctive emblem of the red cross, red crescent or red lion and sun or other protective signs recognised by the Geneva Conventions or Protocol I;
- (vii) if committed wilfully in violation of the relevant provisions of Protocol I—
- (aa) transferring by the occupying Power of parts of its own civilian population into the territory it occupies, or deporting or transferring of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Geneva Convention;
 - (bb) unjustifiably delaying the repatriation of prisoners of war or civilians;
 - (cc) practising apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
 - (dd) making the clearly—recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of

a competent international organisation, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;

(ee) depriving a person protected by the Geneva Conventions or Protocols of the rights of fair and regular trial;

(viii) the misuse of the emblem in Protocol III amounting to a perfidious use in the meaning of Protocol I and subparagraph (vi)(ff) of this paragraph.”.

6. New section 3A

After section 3 of the principal Act, the following section is inserted—

“3A. Other breaches of the Geneva Conventions or Protocols

- (1) Any person, whatever his or her nationality, who, in Kiribati, commits, or aids, abets or procures the commission by another person of a breach of any of the Geneva Conventions or Protocols not covered by section 3 is guilty of an offence.
- (2) Any citizen of Kiribati who, outside Kiribati, commits, or aids, abets or procures the commission by another person of a breach of any of the Geneva Conventions or Protocols not covered by section 3 is guilty of an offence.
- (3) A person who is guilty of an offence under subsections (1) or (2) shall, on conviction thereof, be liable to imprisonment for seven years.”.

7. Amendment of section 4

Section 4 of the principal Act is amended by repealing the words “section 3” and substituting the words “sections 3 or 3A”.

8. Amendment of section 5

Section 5 of the principal Act is amended—

- (a) in the section heading, by inserting at the end thereof the words “and Protocols”;
- (b) in the body of the section, by repealing the words “If, in proceedings under this Act in respect of a grave breach of any of the Geneva Conventions, any question arises under Article 2 of that Convention (which relates to the circumstances in which the Convention applies)” and substituting the words “If, in proceedings under this Act in respect of a grave breach of any of the Geneva Conventions or Protocol I, any question arises under Article 2 of any of the Geneva Conventions (which relate to the circumstances in which the Geneva Conventions and Protocol I apply)”.

9. Amendment of section 7(1)(a)

Section 7(1)(a) of the principal Act is amended by repealing the words “section 3” and substituting the words “sections 3 or 3A”.

10. Amendment of section 9

Section 9 of the principal Act is amended—

- (a) in subsection (1), by inserting the following paragraph after paragraph (c)—
 - “(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 Protocol III), or the designation “Red Crystal”, or the designation “third Protocol emblem”.”
- (b) by repealing subsection (3) and substituting the following subsection —

- “(3) Any person who contravenes any of the provisions of subsections (1) or (2) is guilty of an offence and shall, on conviction thereof, be liable to—
- (a) imprisonment for six months, a fine of \$2000, or both such imprisonment and fine; and
 - (b) forfeit any goods upon or in connection with which the emblem, designation, design or wording was used or any identity cards, identification cards, insignia or uniforms used in the commission of the offence.”; and
- (c) in subsection (4)(a), by repealing the words “subsection (1)(b) or (c)” and substituting the words “subsection (1)(b), (c) or (d)”.

GENEVA CONVENTIONS (AMENDMENT) ACT 2010

EXPLANATORY MEMORANDUM

This Act, which is a companion to the *Kiribati Red Cross Society (Amendment) Act 2010*, amends the *Geneva Conventions Act 1993* to give force of law to the three Additional Protocols to the Geneva Conventions.

Sections 4, 7, 8 and 9 of the Act provide for a number of minor consequential amendments to the principal Act. The significant amendments are to be found in sections 3, 5, 6 and 10.

Section 3 inserts a number of new definitions required for implementation of the legislative obligations of the Additional Protocols. Section 5 inserts into section 3 of the principal Act several new offences to address grave breaches of the first and third Additional Protocols. Section 6 introduces a new section 3A, to cover those breaches of the Geneva Conventions and Additional Protocols that are not as serious as those covered by section 3.

Section 10 makes three changes to section 9 of the principal Act; two significant and one minor. Paragraph (a) adds the new emblem – the Red Crystal – to the list of emblems of the International Red Cross and Red Crescent Movement protected in Kiribati. The Red Crystal is the subject of the third Additional Protocol, adopted in 2005. Paragraph (b) restates the penalty provisions from section 9(3). The penalties for misuse of the emblems are increased, in line with the penalties that were provided for in section 10 of the *Kiribati Red Cross Society Act 1989*, but which are repealed with passage of the *Kiribati Red Cross Society (Amendment) Act 2010*. This removes the ambiguity that had existed, with the same offence punishable under two separate Acts, but with different penalty provisions. Paragraph (c) of section 10 is a consequential amendment.

Titabu Tabane
Attorney General
July 2009