

GENEVA CONVENTIONS BILL 2015

SAMOA

Explanatory Memorandum

Introduction

The Geneva Conventions Bill 2015 (Bill) seeks to domesticate and give effect to certain Conventions made in Geneva on 12 of August 1949 and its 2 Additional Protocols of 1977. Samoa acceded and became a party to the 4 Geneva Conventions and its Protocols on the 23 August 1984. The Conventions have a retrospective effect whereby it takes effect from 1 January 1962, whereas the Protocols took effect on 23 August 1984. The aim of the Conventions and its Protocols is to protect those who are not involved in the hostility of wars (civilians, health workers and aid workers) and those who are no longer participating in the hostilities, such as the wounded, sick and shipwrecked soldiers and prisoners of war. The Bill also provides for the protection of certain protected emblems and items such as the “Red Cross” designation and emblem. Finally, the Bill makes consequential amendments to the Samoa Red Cross Act 1993.

Clauses:

PART 1 PRELIMINARY

- Clause 1:** - provides for the short title of the Bill which will be called the “Geneva Conventions Act 2015” once it is passed. The Act is to commence on the date it is assented to by the Head of State.
- Clause 2:** - provides for the definitions of certain terms and phrases used in the Bill.

- Clause 3:** - provides for the meaning and description of certain protected emblems and items that are protected under the Bill.
- Clause 4:** - provides that any reservation or declaration made by Samoa during its ratification of a Convention or Protocol, such Convention or Protocol is subject to that reservation or declaration.

**PART 2
BREACH OF THE CONVENTIONS OR PROTOCOLS**

- Clause 5:** - provides for the offence and penalty for the breach of the Conventions or Protocols. Any grave breach that occurs outside Samoa may be prosecuted as if the offence was committed in Samoa.
- Clause 6:** - provides the meaning of a grave breach.
- Clause 7:** - provides that the Court cannot proceed with a trial of a person charged under section 5 unless the person is represented by a lawyer.
- Clause 8:** - provides that for a proceeding for an offence under section 5, there should be a certificate of the Minister specifying that the Conventions or Protocols apply.

**PART 3
LEGAL PROCEEDINGS FOR PROTECTED PERSONS**

- Clause 9:** - provides that Part 3 applies to a protected prisoner of war and protected internee that is brought up for trial for an offence.
- Clause 10:** - provides that the Court cannot proceed with a trial of a protected prisoner of war unless he/she is represented by a lawyer.
- Clause 11:** - provides that a notice of trial must be served by the prosecution on the defendant at least three (3) weeks before the trial.

- Clause 12:** - explains that this section only applies if at the time of conviction or sentence of the protected person, there is a protecting power for him/her and that the protecting power must be notified if the sentence is more than two (2) years imprisonment.
- Clause 13:** - provides that the Court may give direction to deduct the time a protected person was remanded in custody from his/her sentence upon their conviction.

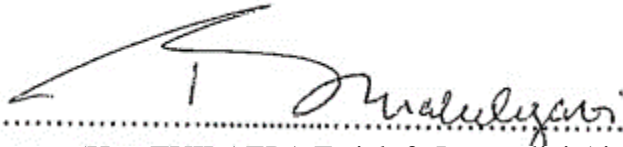
PART 4 PROTECTED EMBLEMS

- Clause 14:** - provides that consent from the Ministry of Foreign Affairs and Trade is required for the use of any of the protected emblems and items. The only exception is the Samoa Red Cross in relation to the use or display of the red cross emblem and the designation “Red Cross”.
- Clause 15:** - creates an offence for the use or display of a protected emblem or item without the consent of the Ministry of Foreign Affairs and Trade.
- Clause 16:** - provides that the court may make a forfeiture order in relation to an offence committed under section 15(1).

PART 5 MISCELLANEOUS

- Clause 17:** - provides for the Head of State’s power to make regulations on the advice of Cabinet.
- Clause 18:** - provides for consequential amendments made to the Samoa Red Cross Act 1993.

Schedule: - provides the list of the Geneva Conventions and its Protocols which apply to this Act.

A handwritten signature in black ink, appearing to read 'Tuilaepe Fatialofa Lugesoliai Aiono', written over a horizontal dotted line.

(Hon TUILAEPA Fatialofa Lugesoliai Aiono
Neioti Sailele Malielegaoi)

**PRIME MINISTER AND MINISTER RESPONSIBLE
FOR FOREIGN AFFAIRS AND TRADE**

GENEVA CONVENTIONS BILL 2015

SAMOA

Arrangement of Provisions

PART 1 PRELIMINARY

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3. Meaning of protected emblems and protected items
4. Application of the Conventions and the Protocols under the laws of Samoa

PART 2 BREACH OF THE CONVENTIONS OR PROTOCOLS

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6. Meaning of grave breach
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11. Notice of trial
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Schedule

2015, No.

A BILL INTITULED

AN ACT to enable effect to be given to certain Conventions done at Geneva on 12 August 1949 and to the Protocols additional to those Conventions done at Geneva on 8 June 1977, and for related purposes.

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Geneva Conventions Act 2015 and shall be read together and form part of the respective Acts that are amended by it.

(2) This Act comes into force on the date of assent.

2. Interpretation - In this Act, unless the contrary intention appears:

“Court” includes the Supreme Court or the District Court of Samoa;

“grave breach” has the meaning in section 6;

“Minister” means the Minister responsible for Foreign Affairs and Trade;

“the First Convention” means the Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949;

“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;

“the Third Convention” means the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949;

- “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;
- “the Conventions” means the First Convention, the Second Convention, the Third Convention and Fourth Convention;
- “offence” means any act or omission that is an offence under the Crimes Act 2013 or any other law or that is, by virtue of section 3 and 4, an offence under any such law;
- “prisoners’ representative”, is in relation to a particular protected prisoner of war at a particular time and means the person responsible for the functions of prisoners’ representative within the meaning of Article 79 of the Third Convention and 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 person” means a protected internee or protected prisoner of war;
- “protected internee” means a person protected by the Fourth Convention or Protocol I, and interned in Samoa;
- “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;

“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;
 “Red Cross Society” means the Samoa Red Cross Society;
 and
 “the Protocols” means Protocol I and Protocol II.

3. Meaning of protected emblems and protected items-

(1) A protected emblem means:

- (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;
- (e) the sign of an equilateral blue triangle on, and completely surrounded by, an orange ground, being the international distinctive sign of civil defence;
- (f) 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;
- (g) 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 worked and installations containing dangerous forces;

(h) 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) or (g) 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;

or

(i) such other flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms as are prescribed by Regulations for giving effect to the Conventions or Protocols.

(2) A “protected item” includes flags, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms or other item prescribed by regulation to be a protected item to give effect to the Conventions or Protocols.

4. Application of the Conventions and the Protocols under the laws of Samoa-(1) For the purposes of this Act, the Conventions and the Protocols listed in the schedule are the conventions and the Protocols to which this Act applies.

(2) Subject to this Act, any other law and any reservation that Samoa has made under a Convention or Protocol to which this Act applies, all obligations, duties, legal processes and rights provided for under the Conventions to which this Act applies (and including any Annexes, Appendices and Addenda to them) shall have the force of law in Samoa, and may be applied or enforced by any legal process available under the laws of Samoa.

(3) Subject to this Act in relation to the exercise of specific powers and responsibilities, the Minister may take any action that may be taken by State Parties under the Conventions to which this Act applies.

(4) The Ministry shall have the principal responsibility for implementing the Conventions to which this Act applies.

(5) If there is any inconsistency between the provisions of any of the Conventions and the Protocols to which this Act applies and the provisions of this Act, the provisions of this Act apply.

PART 2
BREACH OF THE CONVENTIONS
OR PROTOCOLS

5. Breach of the Conventions or Protocols-(1) A person who does the following commits an offence:

- (a) breaches the Conventions or Protocols;
 - (b) aids, abets or procures another person to breach the Conventions or Protocols.
- (2) The defendant is liable upon conviction to:
- (a) life imprisonment if the breach involves the wilful killing of a person protected by the relevant Conventions or Protocols; or
 - (b) a term not exceeding 14 years imprisonment, for any other breach.

(3) If the offence involves a grave breach, an offender who commits the offence outside Samoa, may be prosecuted as if the offence had been committed in Samoa, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in Samoa.

(4) Proceedings for this offence cannot be brought before the Court without the Attorney General's consent.

6. Meaning of grave breach - In this Act a "grave breach" means:

- (a) for the First Convention a breach referred to in Article 50 of that Convention; or
- (b) for the Second Convention a breach referred to in Article 51 of that Convention; or
- (c) for the Third Convention means a breach referred to in Article 130 of that Convention; or
- (d) for the Fourth Convention means a breach referred to in Article 147 of that Convention; or

- (e) for Protocol I means anything referred to as a grave breach in Article 11, paragraph 4, or Article 85, paragraph 2, 3 or 4 of the Protocol.

7. Legal representation-(1) The Court shall not proceed with the trial of a person charged with an offence under section 5 unless:

- (a) the defendant is represented by counsel; and
- (b) the court is satisfied that counsel for the defendant received first instructions from the defendant more than 14 days before the date of trial.

(2) If a court adjourns a trial to comply with the requirements of this section the Court may:

- (a) remand the defendant for the period of the adjournment, but not for a period exceeding three (3) months; and
- (b) direct that a counsel represent the interests of the defendant at any further proceedings in connection with the offence unless the defendant appoints counsel.

8. Proof of application of the Conventions or Protocols -

In proceedings for an offence under section 5, a certificate of the Minister stating that specified circumstances exist and that a Convention or Protocol applies to those circumstances is, in the absence of proof to the contrary, proof of the matters stated in it.

**PART 3
LEGAL PROCEEDINGS FOR
PROTECTED PERSONS**

9. Protected persons - This part applies if:

- (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 maximum penalty is two (2) years imprisonment or more.

10. Legal representation of protected prisoner of war-(1)

The Court shall not proceed with the trial of a protected prisoner of war unless:

- (a) the defendant is represented by counsel;
 - (b) the court is satisfied that counsel for the defendant received first instructions from the defendant more than 14 days before trial; and
 - (c) notice of trial has been served under section 11.
- (2) If a court adjourns a trial to comply with the requirements of this section the Court may:
- (a) remand the defendant for the period of the adjournment, but not for a period exceeding three (3) months; and
 - (b) direct that a counsel represent the interests of the defendant at any further proceedings in connection with the offence unless the defendant or protecting power for the defendant appoints a counsel to represent the accused.

11. Notice of trial-(1) A notice of trial must be served by the prosecution at least three (3) weeks before the trial on:

- (a) the protected person;
 - (b) the protecting power (if there is a protecting power) of the accused; and
 - (c) the representative for the protected person (if the person is a protected prisoner of war).
- (2) The notice must contain the following details:
- (a) a full description of the person including -
 - (i) the full name, date of birth and description of the person;
 - (ii) the person's profession or trade; and
 - (iii) if the person is a protected prisoner of war - the person's rank and army, regimental, personal and serial number;
 - (b) the person's place of detention, internment or residence;
 - (c) the offence with which the person is charged; and
 - (d) the court for proceedings and the time and place appointed for trial.

(3) For this section, a document acknowledging receipt of notice is evidence of receipt of notice if signed:

- (a) by the protected person;
- (b) on behalf of the protected person by the protecting power; or
- (c) on behalf of the protected person by the persons' representative.

(4) If a court adjourns a trial to comply with the requirements of this section the Court may, remand the defendant for the period of the adjournment, but not for a period exceeding three (3) months.

12. Appeals by protected persons-(1) This section applies if at the time of conviction or sentence of a protected person, there is a protecting power for that protected person.

(2) If a protected person is convicted of an offence and sentenced to more than two (2) years imprisonment, the Court must:

- (a) give the protecting power for the protected person notice of conviction and sentence; and
 - (b) give the protected person notice that the protecting power has been notified under paragraph (a).
- (3) The notice of conviction or sentence must be given:
- (a) for a protected prisoner of war, by a police service officer; or
 - (b) for a protected internee, by or on behalf of the person in charge of the prison or place in which that internee is confined.

(4) The protected person has until 28 days from the receipt of notice that the protecting power has been notified to give notice of appeal or notice of application for leave to appeal to the Court of Appeal of Samoa.

13. Reduction of sentence and custody of protected persons - If:

- (a) a protected person is convicted of an offence and sentenced to a term of imprisonment;

- (b) the protected person has spent time remanded in custody before conviction and sentencing in connection with the offence; and
 - (c) the Court has not deducted the time the person has spent in custody from the sentence of imprisonment,
- the Court may direct that the time the protected person was remanded in custody in connection with that offence be deducted from the sentence.

PART 4 PROTECTED EMBLEMS

14. Consent to use protected emblems or items-(1) The Minister may by notice consent to, refuse or withdraw consent for the use or display of a protected emblem or protected item to give effect to the Conventions or Protocols.

(2) As an exception to subsection (1) the Red Cross Society has the right to use or display the emblem of the red cross and the designation “Red Cross” provided in section 3(1)(a) and may give consent to a person or body for the use and display of the same.

(3) A person or body may apply in writing to the Minister for the use or display of the protected emblems or items provided in section 3(1).

15. Offence to use protected emblem or items-(1) A person commits an offence if the person uses or displays a protected emblem or protected item without the authority to do so under this Act.

(2) A person convicted of an offence under subsection (1) is liable upon conviction to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding one (1) year, or both.

(3) If the person charged with an offence under subsection (1) is a company, the director, manager, secretary, other officer of the company, or a person acting on their behalf and the company is deemed guilty of the offence if the act was committed with the consent or connivance of that person.

(4) This section applies to the use or display of a protected emblem or protected item on any ship or aircraft registered in Samoa.

(5) This section does not apply to the use or display of a trade mark registered before commencement of this Act only because it consists of or contains a design reproducing or resembling a protected emblem described in section 3(1)(b) and (c).

(6) Proceedings under this section shall not be instituted without the consent in writing of the Attorney General.

16. Forfeiture-(1) If a person is convicted of an offence under section 15(1), the court may order the forfeiture to the State of:

- (a) any goods or articles upon or in connection with which a protected emblem was used or displayed by that person; and
- (b) any protected items used in the commission of the offence.

(2) The Court may give any directions that are necessary or convenient to give effect to the order.

PART 5 MISCELLANEOUS

17. Regulations - The Head of State, acting on the advice of Cabinet may make the following regulations:

- (a) prescribing the form of protected items 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 this section; or
- (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. Consequential amendments - The Samoa Red Cross Act 1993 is amended as follows:

(a) for the Long Title substitute with:

“AN ACT to provide for the establishment of the Samoa Red Cross Society and for other related matters.”;

(b) in section 2 insert:

““Conventions” means the:

- (a) Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field;
 - (b) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
 - (c) Geneva Convention relative to the Treatment of Prisoners of War; and
 - (d) Geneva Convention relative to the Protection of Civilian Persons in Time of War,
- all adopted at Geneva on 12 August 1949.”;

(c) after section 2, insert:

“2A. Recognising the establishment of the Society-(1)

This section recognises the establishment of the Samoa Red Cross Society as the body corporate which is now the Red Cross Society in Samoa.

(2) The Red Cross Society is a body corporate:

- (a) having perpetual succession and a common seal;
- (b) with power to sue and be sued;
- (c) to purchase, acquire, hold, manage and dispose of property; and
- (d) to enter into any agreements.

2B. Board - The governing body of the Society shall be a Board constituted in accordance with its Constitution.

2C. General objects-(1) The objects of the Red Cross Society shall be:

- (a) to deliver 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;
- (b) in the case of catastrophes or public disasters, to provide the victims thereof with relief;
- (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 Samoa and throughout the world; and
- (d) to promote the Junior Red Cross movement among the youth of all races;
- (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 sharing in the Fellowship which includes its members, the National Societies and the International Body and to keep in close touch with them.

(2) In pursuing the objects referred to in subsection (1) of this section the Red Cross Society shall not make any adverse distinction founded on sex, race, nationality, religion or faith, political opinions or any other similar criteria and shall act in accordance with the spirit and principles of the Conventions.

2D. Recognition as a voluntary aid society - The Government of Samoa shall recognise the Society as a voluntary aid society auxiliary to the public authorities both for the purpose of the Conventions and otherwise, and its right in accordance with the Geneva Conventions Act 2015 and the Conventions to use the distinctive emblem and the term “Red Cross”.”;

(d) by substituting section 3(1) and (2)with:

“(1) No person or body, other than a person or body so authorised under the Geneva Conventions Act 2015 and the Conventions, shall use the term “Red Cross” or its distinctive emblem for any purpose or activity.

(2) The Red Cross Society may authorise in writing any other person or body to use the term Red Cross or its distinctive emblem.

(3) A person or body so authorised by the Society shall use the term “Red Cross” or its distinctive emblem in accordance with any condition or conditions specified by the Society.”.

SCHEDULE

(sections 2 and 6)

THE CONVENTIONS AND THE PROTOCOLS

1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949;
 2. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949;
 3. Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949;
 4. Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949;
 5. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977;
 6. 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 8 June 1977.
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