

**An Act to enable effect to be given in Botswana to certain international conventions made at Geneva on the 12th of August, 1949, and for purposes connected therewith**

ENACTED by the Parliament of Botswana.

**Short Title**

1. This Act may be cited as The Geneva Conventions Act, 1970.

**Interpretation**

2. In this Act, unless the context otherwise requires -

"court" includes a court-martial;

"protected internee" means a person protected by the convention set out in the Fourth Schedule to this Act and interned in Botswana;

"protected prisoner of war" means a person protected by the convention set out in the Third Schedule to this Act;

"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 is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the convention set out in the Third Schedule or, as the case may be, Fourth Schedule to this Act;

"the scheduled conventions" means the conventions set out in the Schedules to this Act.

**Punishment of Offenders Against Conventions**

3. (1) Any person, whatever his nationality, who, whether in or outside Botswana, commits, or aids, abets or procures the commission by any other person of, any such grave breach of any of the scheduled conventions as is referred to in the following articles respectively of those conventions, that is to say -

(a) article 50 of the convention set out in the First Schedule to this Act;

(b) article 51 of the convention set out in the Second Schedule to this Act ;

(c) article 130 of me convention set out in the Third Schedule to this Act; or

(d) article 147 of the convention set out in the Fourth Schedule to this Act

shall be guilty of an offence and 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, shall be sentenced to death or to imprisonment;

(ii) in the case of any other such grave breach as aforesaid, shall be liable to imprisonment for a term not exceeding 14 years.

(2) In the case of an offence under this section committed outside Botswana, a person may be proceeded against, indicted, tried and punished therefor in any place in Botswana as if the offence had been committed in that place.

(3) A Subordinate Court shall have no jurisdiction to try an offence under this section, and criminal proceedings for such an offence shall not be instituted except by or on behalf of the Attorney-General.

(4) If in proceedings under this section in respect of a grave breach of any of the scheduled conventions any question arises under article 2 of such convention (which relates to the circumstances in which the convention applies) that question shall be determined by the President and a certificate purporting to set out any such determination and to be signed by or on behalf of the President shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(5) Charges of offences under this section shall not be triable by court-martial.

### **Provisions as to Certain Legal Proceedings**

4. (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 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 the next following subsection, as far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power, and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

(2) The particulars referred to in the foregoing subsection 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;

(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 served on that power, representative or person on that day.

(4) In this section the expression "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by which the functions of prisoners' representative within the meaning of article 79 of the convention set out in the Third Schedule to this

Act 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.

### **Local Representation of Certain Persons**

5. (1) The court before which -

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

(b) a protected prisoner of war or a protected internee is brought up for trial for any offence,

shall not proceed with the trial unless -

(i) the accused is represented by an advocate or attorney;

(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 attorney by whom that advocate was instructed or by whom the accused is represented.

(2) Where the accused is a protected prisoner of war or a protected internee, in the absence of an advocate or attorney accepted by the accused as representing him, an advocate or attorney instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of the foregoing subsection, be regarded for the purposes of that subsection as representing the accused.

(3) If the court adjourns the trial by reason that the accused is not represented by an advocate or attorney, the court shall direct that an advocate, who shall have a right of audience notwithstanding anything in section 9 of the Legal Practitioners Proclamation (Chapter 146), or an attorney 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 advocate or attorney either accepted by the accused as representing him or instructed as mentioned in the last preceding subsection, an advocate or an attorney, assigned in accordance with this subsection shall, without prejudice to the requirements of paragraph (ii) of subsection (1), be regarded for the purposes of that subsection as representing the accused.

(4) An advocate or an attorney shall be assigned in accordance with the last preceding subsection in such manner as the President may by regulation prescribe, and any advocate or attorney so assigned shall be entitled to be paid out of moneys provided by Parliament such sums in respect of fees and disbursements as the President may by regulation prescribe.

### **Passing of Sentences**

6. (1) In passing sentence on a protected prisoner of war a court shall take into account the fact that since he is not a national of Botswana he is not bound to it by any duty of allegiance and is a prisoner of war as a result of circumstances independent of his own will.

(2) Sentence of death shall not be pronounced on a protected prisoner of war unless the attention of the court has been particularly called to the fact aforementioned.

(3) The court shall be free to reduce, and shall not be obliged to impose, any minimum penalty which may have been prescribed for the offence with which a protected prisoner of war is charged.

(4) In passing sentence on a protected internee a court shall take into account the fact that the internee is not a national of Botswana, and shall be free to reduce, and shall not be obliged to impose, any minimum penalty which may have been prescribed for the offence with which he is charged.

### **Execution of Sentence of Death**

7. If sentence of death is pronounced on a protected prisoner of war or a protected internee, the sentence shall not be executed before the expiration of a period of at least six months from the date when the protecting power is notified of the final judgment imposing or confirming such sentence.

### **Appeals by Protected Persons**

8. 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, or notice of application for leave to appeal, to any tribunal having appellate jurisdiction in the matter shall, notwithstanding anything in the enactments relating to such appeals, be reckoned from the date on which he receives a notice given -

(a) in the case of a protected prisoner of war by an officer of the armed forces;

(b) in the case of a protected internee, by the officer-in-charge of the prison in which he is confined;

that the protecting power has been notified of his conviction and sentence.

### **Reduction of Sentence and Custody of Protected Persons**

9. (1) It shall be lawful for the President 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 to direct that there shall be deducted from that term a period not exceeding the period, if any, during which that prisoner or internee was in custody in connection with that offence either before or after the commencement of the trial but before the sentence began, or is deemed to have begun, to run.

(2) In a case where a protected prisoner of war who is accused of an offence has been in civil custody in connection with that offence either before or after the commencement of the trial for an aggregate period of three months, he shall be transferred from that custody to the custody of an officer of the armed forces 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 for the trial or the continuation thereof.