

THE LAWS OF SOUTH SUDAN

GENEVA CONVENTION PROVISIONAL ORDER, 2012

Provisional Order No.21

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The Geneva Convention Provisional Order, 2012

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Geneva Conventions Provisional Order, 2012

In exercise of powers vested in the President under Article 86 (1) of the Transitional Constitution of the Republic of South Sudan, 2011, the President hereby issues the following Provisional Order:

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement

This Provisional Order may be cited as "Geneva Conventions Provisional Order, 2012, and shall come into force on the date of its signature by the President.

2. Repeal and Saving

Any provisions of existing legislation which are governed by this Provisional Order are hereby repealed; provided that, all proceedings, orders and regulations taken or made thereunder, except to the extent they are cancelled by or otherwise inconsistent with provisions of this Provisional Order, shall remain in full force or effect, until they are repealed or amended.

3. Purpose

The purpose of this Provisional Order is to give effect to certain Conventions done at Geneva on 12 August 1949, to the Protocols additional I and II to those Conventions done at Geneva on 8 June 1977, and to Protocol additional III to those Conventions of 8 December 2005 and for related purposes.

The Provisional Order also regulates use of the Red Cross, Red Crescent and other emblems by ensuring that only persons given consent by the Minister are authorized to use those emblems. Penalties are prescribed to punish misuse of the emblems.

4. Application and Authority

This Provisional Order is drafted in accordance with the provisions of Articles 52, 57(d) and 101(p) of the Transitional Constitution of the Republic of South Sudan, 2011, which grant the Government the exclusive legislative and executive competence to ratify treaties and international conventions for the Republic of South Sudan.

5. Interpretations

In this Provisional Order, unless the context otherwise requires:

"Court" means the High Court or any competent court designated by the Chief Justice and 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” means, in relation to a particular protected prisoner of war at a particular time, 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 the Republic of South Sudan;

“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” means, in relation to a protected prisoner of war or a protected internee, 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 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” mean Protocol I, Protocol II and Protocol III.

CHAPTER II

PUNISHMENT OF OFFENDERS AGAINST THE CONVENTIONS AND PROTOCOL

6. Punishment of grave breaches of the Conventions and Protocol I

- (1) Any person, of whatever nationality, who, in the Republic of South Sudan 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 the Republic of South Sudan, a person may be proceeded against, indicted, tried and punished therefore in any place in the Republic of South Sudan 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, be deemed to have been committed in that place.

7. Punishment of Other Breaches of the Conventions and Protocols

- (1) Any person, of whatever nationality, who, in the Republic of South Sudan, commits, or aids, abets or procures any other person to commit a breach of any of the Conventions or Protocols not covered by section 3, is guilty of an indictable offence.
- (2) Any national of the Republic of South Sudan who, outside the Republic of South Sudan 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 3 is guilty of an indictable offence.

8. Penalties and Procedure

- (1) The punishment for an offence against Section 6 or Section 7 is:
 - (a) if 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 6 or Section 7 shall not be prosecuted in a court except by indictment by or on behalf of the public prosecutor.

9. Proof of Application of the Conventions or Protocols

If, in proceedings under this Chapter 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);
- (c) Article 1 of Protocol II (which relates to the circumstances in which that Protocol applies); or
- (d) Article 1 of Protocol III (which relates to the circumstances in which that Protocol applies);

a certificate under the hand of the Minister of Foreign Affairs and International Cooperation certifying to any matter relevant to that question is *prima facie* evidence of the matter so certified.

10. Jurisdiction of Courts

- (1) A person shall not be tried for an offence against Section 6 or Section 7 by a court other than the High Court.
- (2) enactments relating to trial by court-martial of persons who commit civil offences shall have effect for purposes of the jurisdiction of courts-martial

convened in the Republic of South Sudan as if this Chapter had not been passed.

CHAPTER III

LEGAL PROCEEDINGS IN RESPECT OF PROTECTED PERSONS

11. Notice of Trial of Protected Persons to be Served on Protecting Power, etc.

- (1) The court before which:
- (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 that court has power to sentence the internee 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 sub-section (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 prisoners' representative.

- (2) The particulars referred to in subsection (1) are:
- (a) the full name, date of birth and description of the accused, including the accused's profession or trade; and where the accused is a protected prisoner of war, the accused's rank and army, regimental, personal and serial number;
 - (b) the accused's place of detention, internment or residence;
 - (c) the offence with which the accused 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 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 in the document as a notice under this section;

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

- (4) A court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other law, remand the accused for the period of the adjournment.

12. Legal Representation of Certain Persons

- (1) The court before which:
 - (a) any person is brought up for trial for an offence under Section 6 or Section 7 of this Provisional Order; or
 - (b) a protected prisoner of war is brought up for trial for any offence;
shall not proceed with the trial unless:
 - (i) the accused is represented by counsel; and
 - (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 counsel.

If the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other law, the court may remand the accused for the period of the adjournment.

- (2) If the accused is a protected prisoner of war, in the absence of counsel accepted by the accused as representing the accused, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of subsection (1), be regarded for the purposes of that subsection as representing the accused.
- (3) If the court adjourns the trial pursuant to subsection (1) by reason that the accused is not represented by counsel, the court shall direct that counsel 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 counsel either accepted by the accused as representing the accused or instructed as mentioned in subsection (2), counsel assigned pursuant to this subsection shall, without prejudice to the requirements of paragraph (ii) of subsection (1), be regarded for the purposes of subsection (1) as representing the accused.
- (4) Counsel shall be assigned pursuant to subsection (3) in such manner as may be prescribed in regulations or, in the absence of provision in the regulations, as the court directs, and counsel so assigned shall be entitled to be paid by the Minister such sums in respect of fees and disbursements as may be prescribed by regulations.

13. Appeals by Protected Prisoners of War and Internees

- (1) A protected prisoner of war or a protected internee who has been sentenced to imprisonment may appeal in accordance with the provisions of the Code of Criminal Procedure.
- (2) The protecting powers shall be given notice of the protected prisoner of war or protected internee's conviction and sentence right to appeal.

14. Reduction of Sentence and Custody of Protected Prisoners of War and Internees

- (1) 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, the High Court shall direct that there shall be deducted from that term a period, not exceeding the period, if any, during which that person was in custody in connection with that offence, either on remand or after committal for trial either before the sentence began, or is deemed to have begun to run.
- (2) In a case where the High Court is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, on remand for an aggregate period of not less than three months, the High Court may direct that the prisoner 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 by the remand or committal order.

CHAPTER IV

MISUSE OF THE RED CROSS AND OTHER EMBLEMS, SIGNS, SIGNALS, IDENTITY CARDS, INSIGNIA AND UNIFORMS

15. Use of Red Cross, Red Crescent and Other Emblems, etc.

- (1) Subject to the provisions of this section, it shall be unlawful for any person, without the consent in writing of the Minister of Justice, 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 1 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 Minister of Justice 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 the Republic of South Sudan 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 the Republic of South Sudan.

16. Offences and Penalties

- (1) Any person who contravenes section 15(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 10,000 South Sudanese Pounds or to imprisonment for a term not exceeding six months or both.
- (2) If a court convicts a person of an offence against Section 15(1), the court may order the forfeiture to the State of:
- (a) any goods or other article upon or in connection with 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) If an offence against Section 15(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 15(1) shall not be instituted without the consent in writing of the Minister of Justice.

17. Saving

In the case of a trade mark registered before the passing of this Provisional Order, Sections 15 and 16 do not apply by reason only of its consisting of or containing an emblem specified in subparagraph 15(1) (b), (c) or (d) or a design resembling such an emblem, and if 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 Provisional Order; 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 Provisional Order.

CHAPTER V

REGULATIONS

18. Regulations

The Minister of Justice 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 five thousand South Sudanese Pounds 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 Provisional Order.

SCHEDULES

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.
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Issued under my hand in Juba on this 5 day of June in the year, 2012 .



Gen. Salva Kiir Mayardit
President of the Republic