

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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## **THE PRESIDENCY**

No. 536

12 July 2012

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 8 of 2012: Implementation of the Geneva Conventions Act, 2012**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

*(English text signed by the President)*

*(Assented to 11 July 2012)*

# ACT

**To enact the Geneva Conventions and Protocols additional to those Conventions into law; to ensure prevention and punishment of grave breaches and other breaches of the Conventions and Protocols; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (First Convention)

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## SCHEDULE 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

### Definitions

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1. In this Act, unless the context indicates otherwise—

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

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

“**court**”—

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(a) means a provincial division of the High Court or a court of similar status; and

(b) in the case of a member of the South African National Defence Force who contravenes or fails to comply with this Act while in service or on duty, includes a military court contemplated in section 1 of the Military Discipline Supplementary Measures Act, 1999 (Act No. 16 of 1999), but excludes an Officer Commanding disciplinary hearing;

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“**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, which is set out in Schedule 1 and was signed by the Republic on 12 August 1949 and ratified by the Republic on 31 March 1952;

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“**Fourth Convention**” means the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, which is set out in Schedule 4 and was signed by the Republic on 12 August 1949 and ratified by the Republic on 31 March 1952;

“**Minister**” means the Minister of Defence and Military Veterans;

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“**National Director of Public Prosecutions**” means the person contemplated in section 179 (1)(a) of the Constitution and appointed in terms of section 10 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

“**prisoners’ representative**”, in relation to a particular protected prisoner of war, 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 prisoner of war;

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“**protected internee**” means a person who is interned in the Republic and who is protected by the Fourth Convention;

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“**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;

“**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 Convention or Protocol I, as the case may be;

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“**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, adopted at Geneva on 10 June 1977, which is set out in Schedule 5 and was signed by the Republic on 8 June 1977 and ratified by the Republic on 21 November 1995;

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“**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, adopted at Geneva on 8 June 1977, which is set out in Schedule 6 and was signed by the Republic on 8 June 1977 and ratified by the Republic on 21 November 1995;

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“**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, which is set out in Schedule 2 and was signed by the Republic on 12 August 1949 and ratified by the Republic on 31 March 1952;

“**South African Red Cross Society Act**” means the South African Red Cross Society and Legal Protection of Certain Emblems Act, 2007 (Act No. 10 of 2007); 5

“**Third Convention**” means the Geneva Convention Relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949, which is set out in Schedule 3 and was signed by the Republic on 12 August 1949 and ratified by the Republic on 31 March 1952;

“**this Act**” includes any regulation made in terms of section 19. 10

## CHAPTER 1

### OBJECTS OF ACT AND ENACTMENT OF CONVENTIONS INTO LAW

#### Objects of Act

2. The objects of this Act are to—

- (a) enact the Conventions into law as is required by section 231(4) of the Constitution; 15
- (b) ensure that the Republic complies with the Conventions; and
- (c) ensure prevention of, and punishment for, breaches of the Conventions.

#### Applicable law

3. In addition to the Constitution and the law, any court in the Republic hearing any matter arising from the application of this Act must also consider and, where, appropriate, may apply— 20

- (a) conventional international law;
- (b) customary international law; and
- (c) comparable foreign law. 25

#### Enactment of Conventions into law

4. (1) Subject to the Constitution and this Act, the Conventions have the force of law in the Republic.

(2) The Minister may by notice in the *Gazette* amend any of the Conventions to reflect any changes made to the Convention in question if those changes are binding on the Republic in terms of section 231 of the Constitution. 30

## CHAPTER 2

### BREACHES OF CONVENTIONS

#### Breach of Conventions and penalties

5. (1) Any person who, whether within or outside the Republic, commits a grave breach of the Conventions, is guilty of an offence. 35

(2) For the purposes of subsection (1), “a grave breach” means—

- (a) a grave breach referred to in Article 50 of the First Convention;
- (b) a grave breach referred to in Article 51 of the Second Convention;
- (c) a grave breach referred to in Article 130 of the Third Convention; 40
- (d) a grave breach referred to in Article 147 of the Fourth Convention; or
- (e) a grave breach referred to in Article 11 or 85 of Protocol I.