

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN RED CROSS
SOCIETY AND LEGAL
PROTECTION OF CERTAIN
EMBLEMS BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 28106 of 14 October 2005)
(The English text is the official text of the Bill)*

(MINISTER OF HEALTH)

[B 25—2006]

ISBN 0-9585052-9-2

No. of copies printed 1 800

BILL

To provide statutory recognition for the South African Red Cross Society; and to provide statutory protection for certain emblems; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

PART 1

Definitions

Definitions

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

“**Conventions**” means the four Geneva Conventions and the Protocols additional to those Conventions, listed in the Schedule;

“**emblem**” means the red cross and the red crescent;

“**International Red Cross and Red Crescent Movement**” means the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies and the various national Red Cross or Red Crescent societies;

“**Minister**” means the Minister of Health;

“**red crescent**”, when used to signify an heraldic emblem, means an emblem depicting a red crescent moon, on white ground;

“**red cross**”, when used to signify an heraldic emblem, means an emblem depicting a red cross with branches of equal length, on white ground, formed by reversing the colours of the Swiss Confederation;

“**the Society**” means the South African Red Cross Society referred to in section 2;

“**this Act**” includes any regulation made thereunder.

PART 2

South African Red Cross Society

Statutory recognition of South African Red Cross Society

2. The South African Red Cross Society which existed when this Act took effect and which is a member of the International Federation of Red Cross and Red Crescent Societies, is hereby recognised as the national Red Cross society for the Republic.

Objects of Society

3. The objects of the Society are to prevent and alleviate human suffering and to foster human dignity in all communities.

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Functions of Society

4. In order to achieve its objects, the Society must perform such functions as may be required or permitted by—
- (a) the Conventions;
 - (b) any rule or prescription made by virtue of the Conventions; 5
 - (c) any international agreement which is binding on the Republic; and
 - (d) subject to paragraphs (a), (b) and (c), its constitution.

Use of medical personnel and resources of Society

5. (1) If so requested, the Society may place its medical personnel and resources at the disposal of the State. 10
- (2) Medical personnel and resources which are utilised in the manner contemplated in subsection (1) are subject to the laws applicable to similar personnel and resources of the State.

PART 3

Emblems 15

Protected emblems

6. The emblems of a red cross and a red crescent moon are protected in the manner provided for in this Act and in the Conventions.

Use of emblems

7. An emblem may only be used— 20
- (a) as a sign that persons or equipment fall under the protection of the Conventions;
 - (b) to show that persons or equipment are connected to the International Red Cross and Red Crescent Movement;
 - (c) with the authorisation of the Minister or, in respect of personnel and 25 equipment of the South African National Defence Force, the Minister of Defence; or
 - (d) as otherwise authorised by the Conventions.

Compliance with prescriptions regarding use of emblems

8. (1) (a) Subject to subsection (2), the Minister must— 30
- (i) ensure strict compliance with any prescription contained in, or made by virtue of, the Conventions regarding the use of an emblem; and
 - (ii) take appropriate steps to prevent any misuse of an emblem, in particular by disseminating the prescriptions referred to in subparagraph (i) as widely as possible among organs of state and the general public. 35
- (b) In respect of the South African National Defence Force, the Minister of Defence performs the functions referred to in paragraph (a).
- (2) The Society must—
- (a) cooperate with the Ministers referred to in subsection (1) in the performance of their functions mentioned in that subsection; 40
 - (b) inform such Ministers of any misuse of an emblem which has come to its knowledge; and
 - (c) whenever necessary, or whenever so requested by the relevant Minister, assist the Minister in criminal, civil or administrative proceedings relating to the use or misuse of an emblem. 45

Offences and penalties

9. (1) No person may make use of an emblem or an imitation thereof, or words describing an emblem, unless that person—
- (a) falls under the protection of the Conventions;
 - (b) is connected with the International Red Cross and Red Crescent Movement or 50 any body forming part of that movement;

- (c) is authorised by the Minister or, in respect of the South African National Defence Force, the Minister of Defence to make use of an emblem;
- (d) is otherwise authorised by the Conventions to make use of an emblem; or
- (e) uses the emblem, imitation or words for the purposes of *bona fide* research at a recognised educational or research institution or for the purposes of *bona fide* reporting in the news media. 5

(2) Any person who contravenes subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(3) (a) When an offence contemplated in subsection (2) has been committed for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or member of the management the corporate body and who knew of or could have prevented the commission of the offence, is guilty of the said offence, either jointly with the corporate body or apart therefrom, and on conviction liable to the punishment provided for in that subsection. 10 15

(b) Section 332 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), with the exception of subsections (2)(c), (5), (7), (8) and (9) thereof, applies with the necessary changes in respect of any prosecution of a corporate body or director or member of the management thereof for an offence contemplated in this section.

Seizure of certain article or thing 20

10. The State may seize any article or thing used in contravention of this Act, and Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the necessary changes in respect of any such article or thing.

PART 4

General provisions 25

Delegations and assignments

11. (1) (a) Subject to subsection (2), the Minister and the Minister of Defence may delegate any power and assign any duty conferred or imposed upon them in terms of this Act to officers in their respective Departments.

(b) The Minister and the Minister of Defence are not divested of any power or relieved of any duty so delegated or assigned. 30

(2) The power to make regulations under section 12 may not be delegated.

Regulations

12. The Minister may make regulations that are not in conflict with this Act or the Conventions regarding— 35

- (a) civilian persons authorised to employ an emblem during a time of armed conflict;
- (b) civilian persons authorised to employ an emblem during times of peace;
- (c) generally any ancillary or administrative matter regarding an emblem necessary or expedient to prescribe in order to give effect to this Act and the Conventions. 40

Effect of Act on Implementation of the Rome Statute of the International Criminal Court Act, 2002

13. The provisions of this Act must not be construed as limiting, amending, repealing or otherwise altering any provision of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), or as exempting any person from any duty or obligation imposed by that Act or prohibiting any person from complying with any provision of that Act. 45

Savings

14. (1) Any person who used the emblem for a continuous period of not less than one year prior to the commencement of this Act, which use constitutes an offence in terms of section 9, may apply to the Minister for authorisation to use the emblem.

(2) Notwithstanding section 9, an applicant contemplated in subsection (1) may continue using the emblem until the Minister has considered the application. 5

(3) The Minister may, on the recommendation of the Society, approve the application if the continued use would not constitute a misuse of the emblem within the ambit of the objects of this Act and the Conventions.

(4) Approval of the application may be made subject to such conditions regarding the use of the emblem as may be appropriate in the circumstances. 10

(5) Any application contemplated in subsection (1) must be made within six months after the commencement of this Act.

Repeal of laws

15. Government Notice No. 937 of 30 August 1915, published in *Government Gazette* No 678 of 3 September 1915, is hereby repealed. 15

Short title

16. This Act is called the South African Red Cross Society and Legal Protection of Certain Emblems Act, 2006.

SCHEDULE

(Section 1, definition of “Conventions”)

Conventions

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 5

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949

Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949

Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 10

Protocols

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 15

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN RED CROSS SOCIETY AND LEGAL PROTECTION OF CERTAIN EMBLEMS BILL, 2006

Statutory Recognition of the South African Red Cross Society

1.1.1 The Republic of South Africa is party to the following Geneva Conventions of 12 August 1949:

- (a) The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I);
- (b) the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II);
- (c) the Geneva Convention relative to the Treatment of Prisoners of War (Convention III); and
- (d) the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV).

1.1.2 The Republic is also party to two Protocols additional to the said Conventions, viz.—

- (a) the Protocol relating to the Protection of Victims of International Armed Conflicts (Protocol I); and
- (b) the Protocol relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

1.1.3 On 8 December 2005 a diplomatic conference of the States party to the Conventions adopted the Protocol relating to the Adoption of an Additional Distinctive Emblem (Protocol III). In terms of that Protocol a third emblem, viz. “the red crystal”, was adopted as an additional emblem. The Republic has as yet not ratified Protocol III.

(The Conventions and Protocols referred to in paragraph 1.1.2 are hereinafter jointly referred to as “the Conventions”).¹

1.2 The Conventions emphasise the importance of the International Committee of the Red Cross (the main body of the Red Cross Movement), as well as the importance of national Red Cross societies in relation to humanitarian activities, not only in times of war but also in times of peace. (Those bodies, together with the International Federation of Red Cross Societies, make up the International Red Cross and Red Crescent Movement.) The role the Red Cross and Red Crescent Movement plays during times of war and disasters is well known; it includes caring for the victims and for people in distress, without any partiality.

1.3 The Conventions require parties thereto to recognise a national Red Cross society or other voluntary societies in order for them to perform functions required by the Conventions². This Bill seeks to grant that recognition to the South African Red Cross Society (“the Society”).

1.4 Clauses 2 to 5 contain the recognition sought and give the parameters within which the Society must perform its functions. The Bill does not seek to enumerate the functions of the Society³, since they are to be found in various documents—more may be also added in time to come.

Protection of the emblems of the Conventions

2.1 The Conventions recognise three emblems: The red cross, the red crescent moon and the red lion and sun. The emblem of the red lion and sun, however, fell into disuse.

2.2.1 In terms of the Conventions the following main uses of the emblems are sanctioned:⁴

- (a) Use as a sign that persons or equipment fall under the protection of the Conventions; and
- (b) use to show that persons or equipment are connected to the International Red Cross and Red Crescent Movement.

1. The Conventions can be accessed from the following website: <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions>

2. See e.g. Article 26 of Convention I.

3. See Clause 4 of the Bill.

4. See e.g. Article 44 of Convention I.

2.2.2 The Conventions also authorise the competent authority of a country to permit the use of the emblem in certain circumstances.⁵ The Conventions furthermore authorise the use of the emblems without direct reference to their protective or indicative use mentioned in paragraph 2.2.1.⁶

2.3 In terms of the Conventions and the Protocols thereto⁷ the improper use of the emblems or their designations or imitations thereof are prohibited. The Conventions furthermore require parties to the Conventions to “take measures necessary for the prevention and repression, at all times”, of any misuse of the emblems and their designations.⁸

2.4 Clauses 6 to 10 seek of the Bill to give effect to the matters mentioned above by—

- (a) listing the emblems protected (Clause 6);
- (b) authorising the use of the emblems under certain circumstances (Clause 7);
- (c) requiring the Ministers involved to oversee compliance with the Conventions in relation to the emblems and requiring the Society to assist those Ministers (Clause 8);
- (d) creating the offence of misuse of the emblems and providing for a penalty in that respect (Clause 9); and
- (e) authorising the seizure of articles used in violation of the envisaged Act (Clause 10).

2.5.1 It should be added that Clause 9 of the Bill does not seek to cover a “grave breach”, or war crime, in relation to the misuse of the emblems, which is referred to in Article 85(3)(f), read with Article 37 of Protocol I. Article 85(3)(f) covers the act of using the emblems in a manner which wilfully misleads a person to believe that he or she is entitled to, or obliged to accord, protection under the rules of international law applicable in armed conflict, resulting in death or serious injury.

2.5.2 The said grave breach is already covered by the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002) (“the Rome Statute Act”). That Act criminalises inter alia “serious violations of the laws and customs applicable in international armed conflict . . .”, which violations constitute war crimes.⁹ Those violations include—

- (a) making improper use of the red cross and red crescent emblems resulting in death or serious personal injury; and
- (b) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the red cross and red crescent emblems.¹⁰

2.5.3 In terms of section 4(1) of the Rome Statute Act a person found guilty of committing a war crime “is liable on conviction to a fine or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine, or both a fine and such imprisonment”. Should an alleged offender not be prosecuted for that crime, the matter is, in terms of section 5(5) of that Act, referred to the International Criminal Court at The Hague in the Netherlands, which then has jurisdiction over the matter.

General

3.1 Clauses 11 and 12 are of a general nature and seek to authorise the delegation of functions and the making of regulations, respectively.

3.2 Since the Bill deals with matters that are to a certain extent already covered by the Rome Statute Act, it is necessary to make it clear that the envisaged Act should not be interpreted as limiting or amending the Rome Statute Act. Clause 13 seeks to achieve that objective.

3.3 Clause 14 is a savings clause which covers the case where a person is currently using the emblem, which use will, in future, be illegal. Such a person may apply to the

5. See, e.g., Article 39 of Convention I; and Article 18(4) of Protocol I.

6. See, e.g., Article 36 of Convention I, Article 44 of the same Convention in so far as it relates to “international Red Cross organizations and their duly authorized personnel”, and Article 22 of Convention IV.

7. See, e.g., Article 54 of Convention I and Article 38 of Protocol I.

8. See, e.g., Article 54 of Convention I.

9. See section 4(1), read with paragraph (b)(vii) and (xxiv) of the definition of “warcrimes”, contained in Part 3 of Schedule 1 to the Rome Statute Act.

10. In terms of paragraph (e)(ii) of the definition mentioned in the previous footnote the violation mentioned in paragraph 2.5.2 (b) is also committed if it occurs during an “armed conflict not of an international character”.

Minister of Health to continue using an emblem. The Minister may approve the use if the continued use would not constitute a misuse of the emblem within the ambit of the objects of the envisaged Act and the Conventions.

3.4 Clause 15 seeks to repeal Government Notice No. 937 of 1915. That notice sought to protect the red cross emblem, but was based on the predecessor to the Conventions, viz. the Convention for the amelioration of the condition of the wounded and sick of armies in the field of 1906. The proposed Bill covers the matters contained in the Notice.

PERSONS/BODIES CONSULTED

4. The following bodies were consulted:
- The South African Red Cross Society.
 - The Department of Foreign Affairs.
 - The International Committee of the Red Cross.

FINANCIAL IMPLICATIONS TO THE STATE

5. None

PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Health are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.