

APPENDIX 1

Applicability of the Geneva Conventions to South Africa

The provisions of the Geneva Conventions that apply to the situation in South Africa are set out below:

1. Common Article 2 to the Geneva Conventions

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

2. Common Article 3 to the Geneva Conventions

In the case of armed conflict not of an international character occurring in the territory of one or more of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall, in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To the end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder, of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;

- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.
- (2) The wounded and the sick shall be collected and cared for. Any impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict shall further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

3. Fifth paragraph of Protocol I

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict.

Article 1(2) of Protocol I

In cases not covered by this Protocol or by any other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

Article 1(3) of Protocol I

This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

Article 1(4) of Protocol I

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 96(3) of Protocol I

The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:

- (a) The Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;
- (b) The said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and
- (c) The Conventions and this Protocol are equally binding upon all Parties to the conflict.

Article 1(1) of Protocol II

This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. (...p610)