

Burkina Faso, Law on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 2003

N.B. As per the **disclaimer**, neither the ICRC nor the authors can be identified with the opinions expressed in the **Cases and Documents**. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven**; nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Law No. 059-2003/AN on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 23 October 2003; available at <http://www.cicr.org>]

THE NATIONAL ASSEMBLY

Having regard to the Constitution;

Having regard to Resolution No. 001-2002/AN of 5 June 2002 validating the mandate of the members of the National Assembly; Meeting on 23 October 2003, discussed and adopted the law set forth below:

TITLE I – GENERAL PROVISIONS

Article 1

The use and protection of the red cross and red crescent emblems are governed in Burkina Faso by the provisions of the present law.

Article 2

In accordance with the provisions of the four Geneva Conventions of 12 August 1949 and of their Additional Protocols of 1977, the present law provides protection for: - the red cross and red crescent emblems; - the designations “red cross” and “red crescent”; - the distinctive signs intended to identify medical personnel, units and means of transport.

Article 3

The red cross or red crescent emblem shall be used for protective or indicative purposes. It shall be used in armed conflict and is the symbol of protection granted to medical personnel and transport by the Geneva Conventions and their Additional Protocols. For that purpose, the emblem must be as large as possible. The emblem shall be used to show that a person or property is linked to a red cross or red crescent organization. As such, it shall be small in size so as to avoid all confusion with the emblem used for protective purposes.

TITLE II – USE OF THE EMBLEM

Chapter 1 – Protective use of the emblem

Section 1: Use by the medical corps of the national armed forces

Article 4

Under the control of Ministry in charge of defence, the medical corps of the national armed forces shall use the red cross emblem during armed conflict to indicate its medical personnel, its medical units and its means of medical transport on land, at sea and in the air.

Article 5

Military medical personnel shall be given the protection provided for in the Geneva Conventions. To that end, its members shall wear an armband and carry a special identity card bearing the emblem and issued by the Ministry in charge of defence. Religious personnel and medical personnel attached to the national armed forces shall be given the same protection and shall use the same distinctive signs. The characteristics of the aforementioned armband and identity card and the conditions of their issue shall be established by decree of the Council of Ministers.

Section 2: Use by hospitals and other civilian medical entities

Article 6

On the explicit authorization of the Ministry in charge of defence and under its control, civilian medical personnel, hospitals and other civilian medical entities and means of transport assigned, in particular, to the treatment and transportation of sick and wounded people and shipwrecked people during armed conflict shall be indicated by the protective emblem.

Article 7

Civilian medical personnel shall wear an armband and carry a special identity card bearing the emblem and issued by the Ministry in charge of defence. Civilian religious personnel attached to hospitals and other medical entities shall be given the same protection and shall be identifiable in the same way.

Section 3: Use by the Burkinabé Red Cross Society

Article 8

The Burkinabé Red Cross Society is authorized to make medical personnel, medical entities and medical means of transport available to the medical corps of the national armed forces. That personnel and that property shall be subject to military laws and regulations and are authorized by the Ministry in charge of defence to display the red cross emblem for protective purposes. The personnel shall wear the armband and carry the identity card referred to in Article 5 above.

Article 9

The Red Cross may be authorized to use the emblem to protect its medical personnel and its medical units in the conditions specified in Article 6. If so authorized by the Ministry in charge of defence, it may use the emblem in peacetime to identify the medical units and means of transport that have already been earmarked for deployment in the event of armed conflict.

Chapter 2 – Indicative use of the emblem

Section 1: Use by the Burkinabé Red Cross Society

Article 10

The Burkinabé Red Cross Society is authorized to use the emblem for indicative purposes in the conditions specified in the third paragraph of Article 3 above. That emblem must be small in size. It may use the large emblem during peacetime in exceptional circumstances, in particular during events in which it is important for its relief-workers to be identifiable.

Article 11

Subject to authorization by the Burkinabé Red Cross Society, foreign National Red Cross or Red Crescent Societies present in the territory of Burkina Faso may use the emblem in the conditions stipulated in the preceding article.

Section 2: Use by the international bodies of the

International Red Cross and Red Crescent Movement

Article 12

The International Committee of the Red Cross and Red Crescent [sic] and the International Federation of Red Cross and Red Crescent Societies may use the emblem at all times for their activities in the national territory.

TITLE III – CONTROL AND SANCTIONS

Chapter 1 – Control

Article 13

The different authorities concerned by the present law shall exercise control over strict compliance with the rules relating to the use of the emblem, the designations “red cross” and “red crescent” and the distinctive signs. To that end, they shall take all measures conducive to preventing abuse, particularly by disseminating the relevant rules as widely as possible among the national armed forces, the police forces, the authorities and the civilian population.

Article 14

In accordance with the provisions of international humanitarian law, the Burkinabé Red Cross Society shall work with the authorities in their efforts to prevent and repress all abuse of the emblem. To that end, it shall report violations observed to the competent authorities and lend its support to demonstrating the truth in all related procedures.

Chapter 2 – Sanctions

Article 15

Anyone who makes unauthorized use of the red cross and red crescent emblems, the designations “red cross” or “red crescent”, a distinctive sign or any other sign or designation which is an imitation or could cause confusion, regardless of the purpose for which it is used, shall be sentenced to a term of imprisonment lasting from six months to two years and/or a fine of between fifty thousand (50,000) and five hundred thousand (500,000) CFA francs.

Article 16

Anyone who features the aforementioned emblems or designations on signs, posters, advertisements, flyers

or commercial documents, affixes them to goods or packaging, sells or circulates goods marked in this way shall be subject to the penalties stipulated in the preceding article.

Article 17

If one of the offences stipulated in Articles 15 and 16 is committed in the management of a legal entity, the penalty shall be applied to those who committed said offence or gave the order to commit it.

Article 18

Anyone who, by resorting to perfidy, commits or gives orders to commit acts leading to death or causing serious harm to an enemy's physical integrity or health by using the red cross or red crescent emblem or a distinctive sign shall be sentenced to a term of imprisonment lasting from five to twenty years. Perfidy appeals to the good faith of the enemy with the intention to deceive him and with the aim of making him believe that he is entitled to receive, or has the obligation to give, the protection provided for in the rules of international humanitarian law.

Article 19

Besides the penalties stipulated in the present chapter, any competent authority may order the seizure of objects and materials bearing the emblem in violation of the present law, the removal of the emblem at the expense of the perpetrator of the offence and/or the destruction of the tools and equipment used to produce the emblem.

TITLE IV – FINAL PROVISIONS

Article 20

The procedures for enforcing the present law shall be established by decree of the Council of Ministers.

Article 21

The present law shall be enforced as State law.

Duly discussed and adopted at the public meeting in Ouagadougou on 23 October 2003.

The President Roch Marc Christian KABORE

Secretary of the Meeting Salia SANOU

Discussion

1. Who is entitled to use the red cross and red crescent emblems? In what circumstances? (HR, Art. 23(f); GC I, Arts 38-44 and 53; GC II, Arts 41-43; GC IV, Art. 18; P I, Art. 8(1) and Art. 18; P II, Art. 12)
2. Can the different distinctive signs authorized by the Geneva Conventions and Additional Protocol III be used interchangeably within one and the same State? According to the law, who is entitled to use the cross as an emblem and who is entitled to use the crescent? Are those authorizations compatible with the Geneva Conventions and their Additional Protocols? (GC I, Arts 38, 44 and 53; GC II, Art. 41; GC IV, Art. 18; P I, Art. 8(1) and Art. 18; P II, Art. 12; P III, Arts 2 and 3)
3. Why do the Geneva Conventions contain detailed provisions on the use of the emblem? What problems are the Geneva Conventions trying to avoid?
4. What matters does Art. 44 of Geneva Convention I set out to clarify?
5. What is the difference between protective and indicative use of the emblem? Is the emblem used differently in times of armed conflict and in peacetime? (GC I, Art. 44)
6. Why does Geneva Convention I go into such detail about use of the emblem by the National Red Cross and Red Crescent Societies?
7. In what conditions are the National Societies entitled to use the emblem? When are they entitled to use the emblem for protective purposes? And for indicative purposes?
8. In what circumstances are the ICRC and the International Federation of Red Cross and Red Crescent Societies entitled to the emblem? Are they also obliged to comply with the legal provisions relating to protective and indicative use of the emblem? (GC I, Art. 44)
9. Why does a country – in this case Burkina Faso – need to pass a law on the use of the emblem? Is legislation on the emblem needed even if the country's constitutional system stipulates that international treaties are an integral part of national law? (GC I, Arts 44 and 54)
10. Does that legislation provide other guarantees against abuse of the emblem in times of armed conflict? Or does it limit precisely the installations, vehicles and people authorized to display and to use the emblem in peacetime or during armed conflict?
11. Why, and on what points, has Additional Protocol I clarified the meaning of Arts 39, 42 and 44 of Geneva Convention I and of Art. 18 of Geneva Convention IV? (P I, Arts 8, 18, 37, 38 and 85; P II, Arts 12 and 18)
12. Would Burkina Faso have to amend its legislation if it were to accede to Protocol III additional to the Geneva Conventions?