

Namibia

Vagrancy Proclamation 1920

Proclamation 25 of 1920

Legislation as at 30 March 1962

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Annotated Statutes

Vagrancy Proclamation 1920

Proclamation 25 of 1920

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PROCLAMATION

BY HIS HONOUR SIR EDMOND HOWARD LACAM GORGES, KNIGHT COMMANDER OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE, A MEMBER OF THE ROYAL VICTORIAN ORDER, ADMINISTRATOR OF THE PROTECTORATE OF SOUTH WEST AFRICA IN MILITARY OCCUPATION OF THE UNION FORCES

[\[This Proclamation has no long title. The date of signature appears at the bottom of the Proclamation.\]](#)

WHEREAS it is expedient to suppress trespass, idleness and vagrancy,

NOW THEREFORE under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:-

1.

Any person found wandering abroad and having no visible lawful means, or insufficient lawful means of support, who, being thereunto required by any magistrate, police officer, police constable, superintendent of native locations, or owner or occupier of land, or who having been duly summoned for such purpose, or brought before a magistrate in pursuance of this Proclamation shall not give a good and satisfactory account of himself, shall be deemed and taken to be an idle and disorderly person, and on conviction thereof shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement or any of them, for any period not exceeding twelve months:

Provided that no person shall be liable to be sentenced to undergo spare diet or solitary confinement except during the first three months of any sentence of imprisonment imposed upon him.

[section 1 amended by Proc. 32 of 1927]

2.

Every person who shall wilfully or knowingly harbour, or suffer or permit to reside on land or premises owned or occupied by him, any idle and disorderly person as aforesaid, shall, on conviction before a Magistrate's Court be liable, in case of conviction to a penalty of not exceeding five pounds for every such offence, and in default of payment of such penalty, to be imprisoned, with or without hard labour, for any period not exceeding two months, unless such fine be sooner paid.

[The word "of" in the phrase "to a penalty of not exceeding" is superfluous. A fine not exceeding five pounds is equivalent to a fine not exceeding N\$10.]

3.

(1) Every person found without the permission of the owner (the proof of which permission shall lie on such person) wandering over any farm, in or loitering near any dwelling-house, shop, store, stable, outhouse, garden, vineyard, kraal, or other enclosed place, shall be deemed and taken to be an idle and disorderly person and on conviction thereof shall be liable to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour, and with or without spare diet, and with or without solitary confinement, or any of them, for a period not exceeding twelve months: Provided that no person shall be liable to be sentenced to undergo spare diet or solitary confinement except during the first three months of any sentence of imprisonment imposed upon him. No servant or apprentice of any owner of any land, and no squatter upon the land of any owner shall for the purposes of this sub-section be deemed to be qualified merely by the possession or occupation of any hut, house or building on such land to give permission for and on behalf of such owner.

[Subsection (1) is amended by Proc. 32 of 1927. A fine not exceeding one hundred pounds is equivalent to a fine not exceeding N\$200.]

(2) Every person shall be deemed to be an idle and disorderly person within the meaning of and for all the purposes of this Proclamation, and shall upon conviction be liable to the penalties provided by sub-section 1 of this section, who shall be found without the permission of the owner of any farm (the proof of which permission shall be on such person)

- (a) loitering upon any road crossing such farm, or
- (b) in or loitering at or near any hut, house or other building upon any farm, whether such hut, house or other building shall or shall not be in the possession or occupation of any servant or apprentice of the owner of such farm, or in the possession or occupation of any squatter.

4. ***

[section 4 deleted by Ord. 3 of 1962]

5. ***

[section 5 deleted by Ord. 3 of 1962]

6. ***

[section 6 deleted by Ord. 3 of 1962]

7. ***

[section 7 deleted by Ord. 3 of 1962]

8.

- (1) Every person hereinbefore declared to be idle and disorderly as aforesaid may be apprehended with or without warrant by any magistrate, police officer, or police constable, or by the owner or occupier of the land or premises on which such idle or disorderly person may be, or by anybody acting under the orders of such magistrate, owner or occupier, and upon apprehension, may be conveyed before the magistrate of the district in which he was apprehended, or the nearest magistrate to be dealt with according to law; provided that no such person shall be apprehended without warrant upon the land or premises of any private person, without the consent of such private person, except by such private person or somebody acting by his orders, or by some magistrate or by somebody acting under the orders of such magistrate.
- (2) Every owner of a farm shall be and is hereby authorised for the purpose of searching for any idle and disorderly person, to enter without warrant and make search in any hut, house or other building upon such farm, which shall be in possession or occupation of any servant or apprentice of such owner, or in the possession or occupation of any squatter, and any idle and disorderly person found by such owner in any hut, house or other building, may be apprehended without warrant and dealt with in manner provided in sub-section 1 of this section.

9.

In case it shall be made to appear to the satisfaction of the magistrate of the district by information in writing upon oath that there is reason to believe that any idle and disorderly person as aforesaid is upon the land or premises of any private person, such magistrate shall grant a general warrant authorising some person or person named therein for the purpose to enter upon the land or premises of such private person, in order to ascertain whether any idle and disorderly person as aforesaid is upon such land or premises; and in case any idle and disorderly person as aforesaid shall, upon the execution of such warrant, be found upon such land or premises, he may be forthwith apprehended by the person or persons so named in the said warrant as aforesaid, and conveyed before the magistrate in the district in which he was apprehended, or the nearest magistrate to be dealt with according to law.

10.

It shall be lawful for any magistrate, police officer, police constable, superintendent of native locations, or the owner or occupier of the land or premises whereon or wherein any person as hereafter mentioned may be, to stop any person whom he shall find driving live stock, and to interrogate such person; and if he shall not account satisfactorily for the possession of the live stock so being driven by him, or if there shall be reasonable grounds for suspecting that such live stock have been criminally procured, then it shall be further lawful for such magistrate, police officer, police constable, superintendent of native locations, or owner or occupier, to conduct or cause to be conducted the said live stock and the person so driving the same, to the nearest public prison or police station, so that such persons so driving the said live stock may be detained in custody until the then next sitting of the magistrate of the district in which such prison or police station is situated, who shall enquire into the circumstances, and make such determination in conformity with law as shall to him seem fit and proper.

11.

Every one who shall assault or resist any person authorised as aforesaid to make an arrest, or to enter upon any land or premises while in the execution of such authority, or who shall aid or incite any person so to assault or resist shall, for every such offence be liable, upon conviction before any Magistrate's Court, to a penalty not exceeding ten pounds, and in default of payment thereof to imprisonment with or

without hard labour, for a period not exceeding three months, unless such penalty is sooner paid, or to such imprisonment without the option of paying a penalty.

[The word “or” in the phrase “with or without hard labour” is repeated in the Official Gazette. A fine not exceeding ten pounds is equivalent to a fine not exceeding N\$20.]

12.

All squatters trespassing upon waste crown land, or upon land occupied by any missionary institution, or upon land set apart as a native location may be summarily directed to remove therefrom by order in writing, signed by the magistrate of the district in which such land is situated, such trespassers having been first summoned before the Magistrate’s Court to show cause why they should not remove from such land and no sufficient cause to the contrary having been proved to the satisfaction of such Court; Provided that no person shall be deemed to be a trespasser within the meaning of this section unless he shall originally have entered upon, and shall be upon, such land, without lawful authority; and any person ordered to remove as aforesaid, who shall disobey such order, shall be liable to be dealt with as an idle and disorderly person as aforesaid, and shall be subject to the penalties provided by the first section of this Proclamation.

13.

Every person found wandering or being in any street or road ordinarily used by the public, or in any place of public resort, or in view thereof respectively, without sufficient clothing for the purpose of decency, shall be deemed and taken to be a disorderly person, and to be guilty of an offence against the true intent and meaning of this Proclamation, and may be arrested without warrant and conveyed before the nearest magistrate to be dealt with according to law, and upon conviction, as in the first section this Proclamation is provided, shall be liable to the penalties imposed by that section.

14.

It shall be lawful for any court before which any person is convicted for a first offence under the first and third sections of this Proclamation to adjudge such person in lieu of the penalties therein prescribed, to a term of service on the public works of the Protectorate or to employment under any municipality or private person, other than the magistrate or any member of the court before which such person shall have been convicted, or the person at whose instance such prosecution shall have taken place, who may be willing to employ such person, for any term not exceeding that for which he is liable to imprisonment under this Proclamation in that behalf provided, and at such rate of wages as shall in the opinion of the court be fair and reasonable; provided that it shall be lawful for the Court before whom such person is convicted to detain him in custody for a period not exceeding fourteen days in order that the provisions of this section may be complied with; provided further that if no such service or employment can be obtained the court shall impose a sentence not exceeding that authorised by the aforesaid first and third sections of this Proclamation the sentence in such case to take effect from the date of conviction; provided also always that if any person so adjudged to service as aforesaid shall escape, or attempt to escape or otherwise be guilty of any offence under the laws force relating to Masters and Servants he shall liable to imprisonment with or without hard labour for a period not exceeding six months.

[section 14 amended by Proc. 32 of 1927]

15.

Any person who shall, under colour of this Proclamation, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person shall be liable to pay a fine not exceeding five pounds sterling, and to pay to the arrested person such amount, not exceeding the sum of five pounds sterling, as and for damages, as the magistrate before whom such arrested person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour for a period not exceeding three months unless such fine shall be sooner paid. Provided that nothing in this section

contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

[A fine not exceeding five pounds is equivalent to a fine not exceeding N\$10.]

16.

In this Proclamation the following terms shall bear the following meanings:

“Farm” means any land not situated within the limits of any municipality or in any area with which part 1 of the “Police Offences Proclamation, 1920,” is or hereafter may be in force.

“Squatter” means any person who, not being a servant or apprentice of the owner of any farm, and not being himself the owner or lawful occupier of such farm, is notwithstanding permitted by such owner or lawful occupier to possess or occupy any hut, house or other building in and upon such farm.

“Owner” includes

- (a) The registered owner or person entitled to the beneficial ownership of any land;
- (b) The lessee of any Crown land or private land;
- (c) The lawful occupier of any land;
- (d) Any person placed in lawful possession or occupation of any land as the duly authorised, representative, agent or manager, for and on behalf of the registered owner or person entitled to the beneficial ownership of such land, or for and on behalf of any lessee thereof; but does not include in respect of the hut, house or other building possessed or occupied by him, any person who, either as a servant or apprentice of the owner or occupier of any land, or as a squatter, is in possession or occupation of any hut, house, or building upon such land.

17.

Sub-section 3 of section 361 of the Imperial German Criminal Code shall be and is hereby repealed together with all existing laws in the Protectorate repugnant to or in conflict with the provisions of this Proclamation.

18.

This Proclamation may be cited for all purposes as the “Vagrancy Proclamation 1920.”

[Proc. 32 of 1927, which states in section 7 that it is to be “read as one with the principal Proclamation”, contains the following additional provisions:]

[“5. Penalties]

[Any reference in the principal Proclamation to any penalties prescribed by that Proclamation shall be deemed to be a reference to the penalties so prescribed, as amended by the provisions of this Proclamation.]

[6. Special jurisdiction of magistrates’ courts]

[Notwithstanding anything to the contrary contained in any law relating to magistrates’ courts, a magistrate’s court shall have jurisdiction on summary trial to impose the full penalty for any offence under the principal Proclamation, as amended by this Proclamation.”]

GOD SAVE THE KING.

Given under my hand at Windhuk, this 28th day of May, 1920.

E. H. L. GORGES,

Administrator.