



OFFICIAL GAZETTE

EXTRAORDINARY

of South West Africa.

Published by Authority.

—
BUITENGEWONE

OFFISIËLE KOERANT

van Suidwes-Afrika.

Uitgegeef op gesag.

Monday, 30th December, 1935.

WINDHOEK

Maandag, 30 Desember 1935.

No. 649

CONTENTS.

INHOUD.

Proclamation —

Page.

Proklamasie —

Bladsy.

No. 30. Criminal Procedure and Evidence
Proclamation, 1935

9848

No. 30. Kriminele Prosedure en Bewyslewing
Proklamasie 1935

9848

PROCLAMATION

By HIS HONOUR DAVID GIDEON CONRADIE,
ADMINISTRATOR OF SOUTH WEST AFRICA

No. 30 of 1935.]

WHEREAS it is expedient to consolidate and amend the law relating to criminal law, procedure and evidence;

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

INTRODUCTORY.

1. This Proclamation is divided into twenty-one Chapters which severally relate to the following subject matters:—

- Chapter I. Criminal Jurisdiction of Courts (sections *four to six*).
- Chapter II. Prosecution at the Public Instance (sections *seven to thirteen*).
- Chapter III. Private prosecutions (sections *fourteen to twenty-three*).
- Chapter IV. Prescription of Offences (section *twenty-four*).
- Chapter V. Arrests (sections *twenty-five to forty-eight*).
- Chapter VI. Search Warrants, Seizure and Detention of Property connected with offences and custody of women unlawfully detained for immoral purposes (sections *forty-nine to fifty-eight*).
- Chapter VII. Preparatory Examination (sections *fifty-nine to ninety-nine*).
- Chapter VIII. Bail (sections *one hundred to one hundred and eighteen*).
- Chapter IX. Indictments, summonses and charges (sections *one hundred and nineteen to one hundred and forty-one*).
- Chapter X. Procedure before commencement of trial (sections *one hundred and forty-two to one hundred and sixty-six*).
- Chapter XI. Constitution of Superior Courts (sections *one hundred and sixty-seven to one hundred and seventy-four*).
- Chapter XII. Procedure after commencement of trial (sections *one hundred and seventy-five to two hundred and one*).
- Chapter XIII. Witnesses and Evidence in criminal proceedings (sections *two hundred and two to two hundred and eighty-six*).
- Chapter XIV. Discharge of accused (sections *two hundred and eighty-seven to two hundred and ninety-one*).
- Chapter XV. Previous Convictions (sections *two hundred and ninety-two to two hundred and ninety-seven*).
- Chapter XVI. Judgment on Criminal Trial (sections *two hundred and ninety-eight to three hundred and two*).
- Chapter XVII. Punishments (sections *three hundred and three to three hundred and twenty-seven*).
- Chapter XVIII. Compensation, Costs, Restitution (sections *three hundred and twenty-eight to three hundred and thirty-two*).
- Chapter XIX. Appeals in cases of criminal trials before superior courts (sections *three hundred and thirty-three to three hundred and forty*).
- Chapter XX. Pardon and Commutation (sections *three hundred and forty-one to three hundred and forty-five*).
- Chapter XXI. General and Supplementary (sections *three hundred and forty-six to three hundred and sixty-one*).

PROKLAMASIE

VAN SY EDELE DAVID GIDEON CONRADIE,
ADMINISTRATEUR VAN SUIDWES-AFRIKA.

No. 30 van 1935.]

NADEMAAL dit wenslik is om die wette met betrekking tot die kriminele wet, prosedure en bewyslewering te konsolideer en te wysig,

SO IS DIT dat ek, onder en kragtens die bevoegdhede aan my verleen, hierby proklameer, verklaar en bekend maak, as volg:—

INLEIDENDE BEPALINGE.

1. Hierdie Proklamasie word verdeel in een-en-twintig Hoofstukke wat afsonderlik op die volgende onderwerpe betrekking het:—

- Hoofstuk I. Kriminele Regsbevoegdheid van howe (artikels *vier tot ses*).
- Hoofstuk II. Vervolging van staatsweë (artikels *sewe tot dertien*).
- Hoofstuk III. Private vervolginge (artikels *veertien tot drie-en-twintig*).
- Hoofstuk IV. Verjaring van misdade (artikel *vier-en-twintig*).
- Hoofstuk V. Arrestasies (artikels *vyf-en-twintig tot ag-en-veertig*).
- Hoofstuk VI. Lasbriewe tot huissoeking, inbeslagneming en inbesithouding van goed in verband staande met oortredinge en bewaring van vroue wat wederregtelik aangehou word vir onsedelike doeleindes (artikels *nege-en-veertig tot ag-en-vyftig*).
- Hoofstuk VII. Voorlopige ondersoeke (artikels *nege-en-vyftig tot nege-en-negentig*).
- Hoofstuk VIII. Borgstelling (artikels *eeenhonderd tot eenhonderd-en-agtien*).
- Hoofstuk IX. Aktes van beskuldiging, dagvaringe en aanklagtes (artikels *eeenhonderd-en-negentien tot eenhonderd een-en-veertig*).
- Hoofstuk X. Verrigtinge voor begin van verhoor (artikels *eeenhonderd twee-en-veertig tot eenhonderd ses-en-sestig*).
- Hoofstuk XI. Konstitusie van hoër howe (artikels *eeenhonderd sewe-en-sestig tot eenhonderd vier-en-sewentig*).
- Hoofstuk XII. Verrigtinge na begin van verhoor (artikels *eeenhonderd vyf-en-sewentig tot tweehonderd-en-een*).
- Hoofstuk XIII. Getuies en bewyslewering in kriminele sake (artikels *tweehonderd-en-twee tot tweehonderd ses-en-taggentig*).
- Hoofstuk XIV. Ontslag van beskuldigde (artikels *tweehonderd sewe-en-taggentig tot tweehonderd een-en-negentig*).
- Hoofstuk XV. Vorige skuldigbevindinge (artikels *tweehonderd twee-en-negentig tot tweehonderd sewe-en-negentig*).
- Hoofstuk XVI. Vonnis na kriminele verhoor (artikels *tweehonderd ag-en-negentig tot driehonderd-en-twee*).
- Hoofstuk XVII. Strawwe (artikels *driehonderd-en-drie tot driehonderd sewe-en-twintig*).
- Hoofstuk XVIII. Skadevergoeding, koste, teruggawe (artikels *driehonderd ag-en-twintig tot driehonderd twee-en-dertig*).
- Hoofstuk XIX. Appèls in kriminele sake voor hoër howe (artikels *driehonderd drie-en-dertig tot driehonderd-en-veertig*).
- Hoofstuk XX. Begnadiging en strafvermindering (artikels *driehonderd een-en-veertig tot driehonderd vyf-en-veertig*).
- Hoofstuk XXI. Algemene en aanvullende bepalinge (artikels *driehonderd ses-en-veertig tot driehonderd een-en-sestig*).

2. Hierdie Proklamasie is van toepassing op alle krimi

"night" or "night time" when used in contradistinction to "day" and "day time" means the space of time between sunset and sunrise;

"offence" means an act or omission punishable by law, or by a regulation, order or bye-law lawfully made and in force under any statute;

"peace officer" includes any magistrate or justice; a sheriff or a deputy sheriff; any officer, non-commissioned officer, constable or trooper of a police force established under any law or of any body of persons carrying out under any law the powers, duties and functions of a police force in the Territory; the superintendent, assistant superintendent, or a warden of any prison or gaol; an immigration officer; any inspector of natives or pass officer or any superintendent of a municipal native location or his assistants; and further includes such native headmen as the Administrator may designate in respect of natives in rural native locations;

"person" and "owner" and other like terms, when used with reference to property or acts, include corporations of all kinds, and any other associations of persons capable of owning or holding property of doing acts; they also, when relating to property include His Majesty and any department of His Majesty's Government and of the Union Government, and of the Administration of the Territory;

"policeman" includes any commissioned officer, non-commissioned officer, constable or trooper of a police force established under any law of any body of persons carrying out under any law the powers, duties and functions of a police force in the Territory; and "police" has a corresponding meaning;

"premises" includes, in addition to any land, building or structure, any vehicle, conveyance, ship or boat;

"prescribed" means prescribed under this Proclamation or under any regulations or rules of court lawfully made thereunder;

"property" includes everything animate or inanimate, corporeal or incorporeal, capable of being the subject of ownership;

"public prosecutor" includes any person delegated generally or specially by the Attorney-General under this Proclamation;

"rules of court" means the rules set out in the Fifth Schedule to this Proclamation or any rules made, or remaining in force, under section *three hundred and fifty-five*;

"this Proclamation" includes any regulations or rules of court or forms lawfully made or prescribed thereunder;

"valuable security" includes any document which is the property of any person, and which is the evidence of the ownership of any property or of the right to recover or receive any property.

360. The laws specified in the Sixth Schedule to this Proclamation are hereby repealed to the extent set out in the fourth column of that Schedule.

361. This Proclamation may be cited for all purposes as the Criminal Procedure and Evidence Proclamation, 1935.

GOD SAVE THE KING.

Given under my hand and seal at Windhoek this 27th day of November, 1935.

D. G. CONRADIE,
Administrator.

FIRST SCHEDULE.

OFFENCES REFERRED TO IN RESPECT OF WHICH ARRESTS MAY UNDER CHAPTER V. BE MADE WITHOUT WARRANT.

Treason.
Sedition.
Murder.
Culpable Homicide.

Rape, or any statutory offence of a sexual nature against a girl of or under a prescribed age.

"nag" of "gedurende die nag", as dit gebruik word in teenstelling met "dag" of "gedurende die dag", beteken dit die tydverloop tussen sonsondergang en sonsopgang;

"oortreding" beteken 'n handeling of nalating waarop by wet of by regulasie, order of verordening wetlik opgestel en geldig onder wetlike voorskrifte, 'n straf opgelê is;

"vredesbeampte" sluit in 'n magistraat of vrederegter; 'n balju of adjunk-balju; 'n offisier, onderoffisier, konstabel of berede manskap van 'n polisiemag onder wet opgestel of van 'n troep persone wat ingevolge 'n wet die bevoegdhe, verpligtinge en funksies van 'n polisiemag in die Gebied uitoefen; die bestuurder, assistent-bestuurder of 'n bewaarder van 'n gevangenis of tronk; 'n immigrasiebeampte; 'n inspekteur van naturelle of pasbeampte of 'n bestuurder van 'n munisipale naturellelokasie of sy assistent; en sluit verder in sodanige naturelle-hoofman as die Administrateur mag aanwys ten opsigte van naturelle in landelike naturellelokasies;

"persoon" en "eienaar" en ander soortgelyke uitdrukkinge, as hulle met betrekking tot goed of handeling gebruik word, sluit in korporasies van alle soorte en alle ander vereniginge van persone wat in staat is om goed of eiendom te besit en te behou of handeling te verrig; hulle sluit ook in, as hulle betrekking het op goed, goed van Sy Majesteit en van 'n departement van Sy Majesteit se Regering en van die Unie-regering en van die Administrasie van die Gebied;

"polisiedienaar" sluit in 'n offisier, onderoffisier, konstabel of berede manskap van 'n polisiemag, opgerig kragtens wetlike voorskrifte of van 'n troep persone wat kragtens wetlike voorskrifte die bevoegdhe, pligte en funksies van 'n polisiemag uitoefen in die Gebied; en "polisie" het 'n ooreenkomstige betekenis;

"perseel" sluit in, behalwe grond, geboue of opstalle, 'n voertuig, vervoermiddel, skip of boot;

"voorgeskrif" beteken voorgeskryf ingevolge hierdie Proklamasie of kragtens regulasies of reëls van die hof, wettig daaronder bepaal;

"goed" sluit in alle voorwerpe lewend of leweloos, liggaamlik of onliggaamlik, wat as eiendom besit kan word;

"publieke vervolger" sluit in 'n persoon wat algemeen of spesiaal deur die Prokureur-generaal onder hierdie Proklamasie afgevaardig is;

"reëls van die hof" beteken die reëls, uiteengesit in die Vyfde Bylae van hierdie Proklamasie, of enige reëls wat kragtens artikel *driehonderd en vyf-en-vyftig* bepaal is of van krag bly;

"hierdie Proklamasie" sluit in regulasies of reëls van die hof of vorms wetlik daaronder bepaal of voorgeskryf;

"sekuriteit van waarde" sluit in 'n dokument wat die eiendom van iemand is, en wat tot bewys strek van die eiendom van goed of van die reg om goed terug te kry of te verkry.

360. Die wette omskryf in die Sesde Bylae van hierdie Proklamasie word hierby herroep in die omvang uiteengesit in die vierde kolom van daardie Bylae.

361. Hierdie Proklamasie kan vir alle doeleindes aangehaal word as die Kriminele Prosedure en Bewyslewering Proklamasie 1935.

GOD BEHOEDE DIE KONING.

Gegee onder my hand en seël te Windhoek op hierdie 27ste dag van November 1935.

D. G. CONRADIE,
Administrateur.

EERSTE BYLAE.

OORTREDINGE WAARNA VERWYS WORD IN VERBAND WAARMEE ARRESTASIE ONDER HOOFSTUK V SONDER LASBRIEF GEMAAK KAN WORD.

Verraad.
Oproer.
Moord.
Strafbare Manslag.

Verkragting, of elke wetlike oortreding van geslagtelike aard teen 'n meisie van of onder 'n voorgeskrywe ouderdom.

To the Keeper of the Gaol of

Whereas in pursuance of the powers vested in me by sub-section (2) of section *three hundred and twenty-one* of the Criminal Procedure and Evidence Proclamation, 1935, A.B. has been required to enter into a bond with sufficient security to keep the peace towards X.Y. of and to refrain from injuring the property of the said X.Y. for the period of months, and the said A.B. has failed to give such security.

This is therefore to require you, in His Majesty's name, to receive the said A.B. as a prisoner into your custody and safely keep him in custody until he is discharged, but not longer than one month; and for so doing this shall be your warrant.

Given under my hand at
this day of 19

Magistrate.

Clerk of the Court.

SIXTH SCHEDULE.
LAWS REPEALED.

Country: Whether Union or Territory.	No. and Year of Law.	Title or Subject of Law.	Extent of Repeal.
South West Africa	Proclamation No. 20 of 1919	Criminal Procedure and Evidence Proclamation, 1919	The whole.
"	Proclamation No. 21 of 1919	Administration of Justice Proclamation, 1919	Section 3 (6) all words after "South Africa". Section 3 (7).
"	Proclamation No. 38 of 1920	Further Administration of Justice Proclamation, 1920	Section 3 (4), Section 10, Section 11 all words after "Cape of Good Hope".
"	Proclamation No. 55 of 1920	Appellate Division Jurisdiction Proclamation, 1920	Sections 2 and 3.
"	Proclamation No. 20 of 1926	Criminal Procedure Amendment Proclamation, 1926	The whole.
"	Proclamation No. 20 of 1928	Criminal Procedure Amendment Proclamation, 1928	The whole.
"	Ordinance No. 9 of 1930	Riotous Assemblies and Criminal Law Amendment Ordinance, 1930	Section 15.

Aan die sipier van die gevangenis te

Nademaal kragtens die bevoegdheede my verleen by sub-artikel (2) van artikel *driehonderd een-en-twintig* van die Kriminele Prosedure en Bewyslewering Proklamasie 1935, A.B. gelas is om 'n borgakte aan te gaan met voldoende sekuriteit om die vrede te bewaar teenoor X.Y. van en hom te onthou van die eiendom van genoemde X.Y. te beskadig vir 'n tydperk van maande, en genoemde A.B. in gebreke gebly het om sodanige sekuriteit te stel.

So is dit om u te gelas om in naam van Sy Majesteit genoemde A.B. as gevangene in u bewaring te ontvang en te hou, totdat hy in vryheid gestel word, maar nie langer dan een maand nie; en vir hierdie doel is dit u lasbrief.

Gegee onder my hand te op hierdie
..... dag van 19.....

Magistraat.

Klerk van die Hof.

SESDE BYLAE.
HERROEPE WETTE.

Land: Unie of Gebied.	No. en jaar van Wet.	Titel of onderwerp van Wet.	Hoever herroep.
Suidwes- Afrika:	Proklamasie No. 20 van 1919	De Crimineele Prosedure en Bewyslewering Proklamatie, 1919	Gehheel.
"	Proklamasie No. 21 van 1919	De Rechts- bedeeling Proklamatie, 1919	Artikel 3 (6) al die woorde na "gevolgd wordt". Artikel 3 (7).
"	Proklamasie No. 38 van 1920	Verdere Rechtsbedeling Proklamatie 1920	Artikel 3 (4), Artikel 10, Artikel 11, al die woorde na "Kaap de Goede Hoop".
"	Proklamasie No. 55 van 1920	Afdeling van appèl Rechts- macht Prokla- matie 1920	Artikels 2 en 3.
"	Proklamasie No. 20 van 1926	Kriminele Prosedure Wysigings- Proklamasie 1926	Gehheel.
"	Proklamasie No. 20 van 1928	Kriminele Prosedure. Wysigings- Proklamasie 1928	Gehheel.
"	Ordonnansie No. 9 van 1930	Oproerige Samekomste en Kriminele Wet Wysigings- ordonnansie 1930	Artikel 15.