

Namibia

Squatters Proclamation, 1985

Proclamation AG21 of 1985

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Squatters Proclamation, 1985

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[sections 1, 5, 8, 14, 15, 16 and 17 came into force on date of publication: 30 May 1985 (section 16)]

[sections 11 and 12 do not appear to have come into force]

PROCLAMATION

by the

ADMINISTRATOR-GENERAL FOR THE TERRITORY OF SOUTH WEST AFRICA

PROVISIONS APPLICABLE IN RELATION TO THE PREVENTION AND TERMINATION OF UNLAWFULL
SQUATTING AND MATTERS INCIDENTAL THERETO

[The word “unlawful” is misspelt in the Official Gazette, as reproduced above.]

Under the powers vested in me by Proclamation 181 of 19 August 1977, I hereby make the laws set out in the
Schedule.

W. A. VAN NIEKERK

Administrator-General Windhoek, 10 May 1985

Schedule

1. Definitions

In this Proclamation, unless the context otherwise indicates -

“building or structure” includes any hut, shack, tent or similar structure;

“**department**” means any department as defined in section 1 of the Government Service Act, 1980 (Act [2 of 1980](#));

[The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995; section 38(a) of Act 13 of 1995 provides that any reference in any other law to a “department” shall be construed as a reference to the corresponding office, ministry or agency, as the case may be.]

“**local authority**” means, subject to the provisions of section 12, the council of any municipality, or any village management board, or the Peri-Urban Development Board established by section 2 of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

[The Village Management Boards Ordinance 14 of 1963 which provided for village management boards, and the Peri-Urban Development Board Ordinance 19 of 1970 were both repealed by the Local Authorities Act [23 of 1992](#).]

“**Secretary**” means the Secretary for National Health and Welfare.

[The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995; section 38(a) of Act 13 of 1995 provides that any reference in any other law to the head of a department or to a secretary of a department shall be construed as a reference to the permanent secretary of the corresponding office, ministry or agency, as the case may be.]

2. Prohibition of unlawful presence of persons on or in any land, building or structure, and provision for the removal of such persons and buildings or structures erected by or for them

- (1) Any person other than a person acting on the authority of any law or in the performance of his functions or duties as an employee employed in any department or local authority, who -
 - (a) without lawful cause enters upon or enters any land, building or structure; or
 - (b) without the consent of the owner or lawful occupier of any land, building or structure, is on or in such land, building or structure,shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (2) Criminal proceedings instituted against any person for contravening subsection (1)(b) by having been on or in any land, building or structure at any specified time or during any specified period, shall not be a bar to such proceedings against such person for any such contravention by having been on or in such land, building or structure at any other time or during any other period.
- (3) If any person is convicted of any offence referred to in subsection (1) on account of his presence on or in any land, building or structure, the court convicting him may -
 - (a) in addition to any penalty imposed for such offence, make an order for the summary ejectment of such person from such land, building or structure;
 - (b) make such further orders, issue such instructions and confer such authority as may reasonably be necessary -
 - (i) to give effect to the order of ejectment;
 - (ii) to bring about the removal of the said person and his family and dependants to such other place within or outside the area of jurisdiction of such court as it may determine;
 - (iii) to ensure that any buildings or structures erected or added by or for such person on, in or to land or any building are demolished and removed together with the contents thereof.

- (4) If the magistrate of the district in which the place is situated to which persons have been removed under subsection (3), is satisfied on the ground of information furnished to him or on the ground of personal investigation, that such persons can be more suitably accommodated elsewhere or that they do not have suitable employment within a reasonable distance from the said place, the said magistrate may take such steps as he may deem to be reasonably necessary to remove the said persons to any other suitable place determined by him, within or outside his district and shall *mutatis mutandis* have the powers conferred upon a court by subsection (3).

3. Prohibition of erection or occupation of buildings or structures without the necessary approval, and provision for demolition and removal of buildings or structures so erected

- (1) The owner or lessee of land or any person exercising control over the land with the consent of the owner -
 - (a) who erects or causes or allows to be erected on such land any building or structure intended for human habitation, without the prior approval of the Secretary or any local authority of any plan or description of such building or structure required by law; or
 - (b) who permits any person to occupy any building or structure so erected,shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.
- (2) If in any prosecution for a contravention of subsection (1)(b) it is proved that any person occupied the building or structure concerned, it shall be deemed until the contrary is proved, that the accused permitted such person to occupy such building or structure.
- (3) The court convicting any person of any offence referred to in subsection (1), may in addition to any penalty imposed for such offence make an order that such person shall, at his own expense and within such period as the court may determine, demolish and remove the building or structure concerned.
- (4) Any person who fails to comply with any order referred to in subsection (3), shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.
- (5) If any person ordered under subsection (3) to demolish and remove any building or structure fails to comply with the order, the local authority within whose area of jurisdiction that building or structure is situated, may cause it to be demolished and removed together with its contents and may recover the cost of demolition and removal from the said person.

4. Demolition and removal of buildings or structures erected without consent of owner of land or contrary to legal requirements

- (1) Notwithstanding anything to the contrary in any law contained and without the authority of an order of court or prior notice of whatever nature to any person -
 - (a) the owner of land may demolish and remove together with its contents any building or structure intended for human habitation or occupied by human beings which has been erected or is occupied without his consent on such land;
 - (b) any building or structure intended for human habitation or occupied by human beings which has been erected on land within the area of jurisdiction of any local authority, without the prior approval of that or any former local authority of any plan or description of such building or structure required by law, may at the expense of the owner of the land be

demolished and removed together with its contents by the local authority or the Secretary or any officer employed in his department and authorized thereto by him.

[Subsection (1) was declared unconstitutional by Shaanika & Others v Windhoek City Police & Others 2013 (4) NR 1106 (SC): “With effect from 15 July 2013, ss 4(1) and (3) of the Squatters Proclamation 21 of 1985, are declared to be inconsistent with the Constitution, and invalid and of no force and effect.”]

- (2) If any owner of land in the area of jurisdiction of a local authority becomes aware that on such land any building or structure intended for human habitation or occupied by human beings has been erected or is being occupied without his consent, he shall forthwith notify such local authority or the Secretary thereof and if he fails to do so he shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (3) Unless a person first satisfies the court on a preponderance of probabilities -
- (a) that he is lawfully entitled to occupy the land on which any building or structure has been erected; and
 - (b) in the case of any person whose right of occupation is based on the consent of any person other than the owner of such land, that such other person is lawfully entitled to allow other persons to occupy such land,

such first-mentioned person shall not have recourse to any court of law in any civil proceedings founded on the demolition or removal or intended demolition or removal of such building or structure under this section and it shall not be competent for any court of law to grant any relief in any such proceedings to such last-mentioned person.

[Subsection (3) was declared unconstitutional by Shaanika & Others v Windhoek City Police & Others 2013 (4) NR 1106 (SC): “With effect from 15 July 2013, ss 4(1) and (3) of the Squatters Proclamation 21 of 1985, are declared to be inconsistent with the Constitution, and invalid and of no force and effect.”]

5. Prohibition of dwelling or employing unless proper accommodation is available

- (1) The Administrator-General may by notice in the Official Gazette and after consultation with the local authority in whose area of jurisdiction any area defined in such notice is situated -
- (a) prohibit any person of such category or class as may be mentioned in the notice from dwelling in any such area so defined unless -
 - (i) such person can deliver satisfactory proof to such local authority to the effect that, while dwelling in the said defined area, he has suitable accommodation at his disposal; or
 - (ii) such person has obtained from such local authority written approval to dwell in the said defined area, for a period and in such a way and on the conditions, as may be prescribed;
 - (b) prohibit any person from employing in the area so defined any other person of such category or class as may be mentioned in the notice, as an employee of such category or class as may be so mentioned, unless such first-mentioned person has obtained from the said local authority a certificate to the effect that satisfactory arrangements have been made for proper accommodation in the said defined area or elsewhere for the said other person while employed as such an employee by such first-mentioned person.
- (2) Any person performing any act in contravention of any prohibition under subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

- (3) For the purposes of subsection (1) “suitable accommodation” means accommodation which is not in contravention of any law, approved either generally or specifically, by a local authority and provided with the expressed or implied authority of the owner thereof, and “suitable accommodation” also includes -

[The word “suitable” is misspelt in its second use in subsection (3), as reproduced above.]

- (a) accommodation provided for a guest in an accommodation establishment, registered as such in accordance with the Accommodation Establishments and Tourism Ordinance, 1973 (Ordinance 20 of 1973);
- (b) accommodation supplied for patients in a hospital or similar institution as contemplated in the Hospitals Ordinance, 1972 (Ordinance 14 of 1972);

[The Hospitals Ordinance 14 of 1972 has been replaced by the Hospitals and Health Facilities Act 36 of 1994.]

- (c) accommodation lawfully provided by an educational institution, recognised as such by the Administrator-General, for a student or scholar attending such institution;
- (d) accommodation provided subject to the prescribed conditions in a township, hostel or in single or in married quarters or any other accommodation, recognised as approved accommodation, under this or any other law;
- (e) such other accommodation as may be determined by the Administrator-General to be approved accommodation, by notice in the Official Gazette.

6. Prohibition of collection of certain funds

Any person who receives or solicits payment of anything by way of contribution or otherwise from any other person to be used directly or indirectly for any purpose relating to the organization of the presence of persons in or upon any land, building or structure contrary to the provisions of section 2 or to any order given or instruction issued under that section or section 7, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment and -

- (a) if the court trying the case is satisfied that anything serving as an exhibit in the case has been received by any person in contravention of the provisions of this section, the court shall declare any such thing to be forfeited for the benefit of the Central Revenue Fund;
- (b) if the said court is satisfied that the person convicted has received any money other than money declared to be forfeited as aforesaid, in contravention of the said provisions, the court may make an order that he shall pay to the Secretary for Finance an amount equal to the amount of such other money and thereupon such order shall be executed against him as if it were an order in a civil suit and any amount of money recovered thereunder shall be deposited in the Central Revenue Fund.

7. Applications for removal of persons from land or buildings, and ejectment orders

- (1) The magistrate of the district in which any land or buildings are situated, may hear an application for an order for the removal of persons from such land or building -
 - (a) if the application is made by the owner or lawful occupier of such land or building or by the head of any department or any officer employed in any department authorized by the head thereof or the local authority in whose area of jurisdiction such land or building is situated; and
 - (b) if at the same time there are submitted to the magistrate affidavits on oath in support of the application and an affidavit stating that copies or translations of the first-mentioned affidavits in the Afrikaans and the English languages, have been posted in a prominent place on the said land or on or near the said building together with a notice in the said languages

of the date of the contemplated application, which shall be a date not less than three days after the date of posting of the said copies or translations.

[The official language of Namibia is English only (Namibian Constitution, Art 3(1)).]

- (2) If the magistrate, after consideration of the affidavits referred to in subsection (1) and of affidavits submitted to him by persons affected by the application in reply to the first-mentioned affidavits and of representations by their legal representatives is satisfied -
 - (a) in the case of any application by the owner or lawful occupier of the land or building concerned, that the persons concerned entered upon or entered the said land or building without leave of the said owner or occupier of the said land or building and that they are remaining thereon or therein without his consent and refuse, despite warning, to depart therefrom; or
 - (b) in the case of all other applications that the persons concerned entered upon or entered the land or building and are congregating thereon or therein, whether with the consent of the owner or lawful occupier or not; and
 - (c) in the case of all applications that the conditions under which the persons concerned are living on or in the said land or building are such that unless removed therefrom, the health or the safety of the public in general or of any class of persons, including the persons aforesaid, may be endangered,

the magistrate, after consultation with the local authority with in whose area of jurisdiction the land or building is situated, may make an order for the summary ejectment of the said persons from the said land or building and shall mutatis mutandis have the powers conferred upon a court by section 2(3)(b).
- (3) The provisions of section 2(4) shall mutatis mutandis apply in respect of persons removed under subsection (2) of this section.

8. Establishment of an emergency camp by local authority

- (1) Any local authority may, and if so directed, after consultation by the Administrator-General or the Secretary, shall establish within the area over which it has jurisdiction, an emergency camp for the purpose of the accommodation of homeless persons, and the Administrator-General may make regulations, providing for the administration, maintenance, sanitation and health of the said emergency camp, and the control thereof, including particularly the control of trading.
- [The word “accommodation” is misspelt in the Official Gazette, as reproduced above.]**
- (2) Without prejudice to the generality of the powers conferred under subsection (1), the said regulations may in particular -
 - (a) provide for fees or charges to be levied in respect or any accommodation or service supplied;
 - (b) contain different provisions in respect of different areas, categories or classes of persons;
 - (c) provide for penalties in respect of the contravention of such regulations, on a first conviction, of a fine not exceeding five hundred rand or imprisonment for a period not exceeding six months, or both such fine and such imprisonment, and on a subsequent conviction, of a fine not exceeding one thousand rand or imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.
 - (3) The said regulations shall be published in the Official Gazette, and shall in addition be exhibited in both the English and Afrikaans languages, in a prominent place in or in the vicinity of the said emergency camp for the purposes of this section.

[The official language of Namibia is English only (Namibian Constitution, Art 3(1)).]

- (4) The Administrator-General may at any time by notice in the Official Gazette, declare that as from a date to be stated in such notice, an emergency camp established in terms of this section shall no longer be an emergency camp for the purposes of this section.

9. Prohibition of hindering, obstructing or delaying certain authorized persons

Any person who hinders, obstructs or delays any other person in the execution or exercise by such other person of any order, instruction, authority or power made, given or conferred by or under section 2(3) or (4), 3(5), 4(1), 5(1) or 7(2) or (3), shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

10. Jurisdiction of magistrate's court

Any magistrate's court shall, notwithstanding anything to the contrary in any law contained, have jurisdiction to make any order, give any instruction, confer any power or impose any penalty provided for by this Proclamation.

11. Extension of area of jurisdiction of local authority for purposes of this Proclamation

[The word "jurisdiction" is misspelt in the Official Gazette, as reproduced above.]

The Administrator-General may from time to time, after consultation with any local authority, by notice in the Official Gazette -

- (a) declare that any area described in the notice, situated outside the area of jurisdiction of such local authority, shall, for the purposes of such provisions of this Proclamation as may be mentioned in the notice and to the extent indicated in the notice, be deemed to be part of the said area of jurisdiction;
- (b) amend or repeal any such notice.

[Section 11 does not appear to have been brought into force.]

12. Designation of holders of certain offices as local authority for purposes of this Proclamation

The Administrator-General may from time to time by notice in the Official Gazette -

- (a) declare the holder of any office mentioned in the notice in any department so mentioned, to be for the purposes of such provisions of this Proclamation as may be so mentioned, the local authority for any area described in the notice, situated outside the area of jurisdiction of any local authority;
- (b) amend or repeal any such notice.

[Section 12 does not appear to have been brought into force.]

13. Limitation of liability

No person, including any governmental authority, shall be liable in respect of anything done in good faith in the exercise of any power or the performance of any function or duty under or by virtue of the provisions of this Proclamation.

[The word "exercise" is misspelt in the Official Gazette, as reproduced above.]

14. Certain fines and fees or charges to go to local authority

- (1) Any fine collected for any contravention of any provision of this Proclamation in any proceedings instituted as a result of action taken by any officer of any local authority shall be paid over to such local authority.
- (2) The fees or charges which arise in respect of any accommodation or services rendered by a local authority in terms of the provisions of this Proclamation, shall be paid to such local authority.

15. Expenditure by local authority

- (1) Any local authority may, in connection with the performance in its area of jurisdiction of the functions and the duties assigned to it in terms of the provisions of this Proclamation, incur such expenditure as may be approved by the Administrator-General.
- (2) Expenditure so approved may be refunded to such local authority by the Administrator-General either in part or in full.

16. Application of Proclamation

This Proclamation, except section 1, 5, 8, 14, 15, 16 and 17, shall apply only in such area and to such extent and with effect from such date as the Administrator-General may from time to time by proclamation in the Official Gazette determine and shall cease to apply in the said area with effect from a date so determined.

[The word “section” should be “sections” to be grammatically correct.]

17. Short title

This Proclamation shall be called the Squatters Proclamation, 1985.