

BECHUANALAND PROTECTORATE.

No. 81 of 1921.

[Promulgated 2nd December, 1921.]

PROCLAMATION

By His Royal Highness the High Commissioner

Entitled the Bechuanaland Protectorate Reformatories and Prisoners and Juvenile Offenders Removal Proclamation, 1921.

Whereas it is expedient to enable the courts of the Bechuanaland Protectorate (herein after referred to as "the territory") to punish juvenile and juvenile adult offenders by ordering their detention in reformatories;

And whereas it is expedient to provide that persons sentenced by the courts of the territory to imprisonment or to detention in a reformatory may be removed to the Union for the purpose of serving such sentences therein;

And whereas it is expedient to enable the High Commissioner for South Africa to enter into an agreement on behalf of the Government of the territory providing for the reception and detention of such persons in the Union and regulating the conditions of such reception and detention;

And whereas it is further expedient to provide that persons sentenced by the courts of other territories who are in course of removal to the Union shall be deemed to be in lawful custody while in transit through the territory;

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

1. In this Proclamation unless inconsistent with the context—

"juvenile" shall mean—

- (1) any person under the age of sixteen years; and
- (2) any person under the age of eighteen years whose classification as a juvenile has been expressly sanctioned by the Resident Commissioner;

"juvenile adult" shall mean—

- (1) any person who is between the ages of sixteen and twenty-one years; and
- (2) any person who is between the ages of twenty-one and twenty-five years and whose classification as a juvenile adult has been expressly sanctioned by the Resident Commissioner;

"juvenile adult reformatory" shall include in addition to any institution established as such any division of a gaol or juvenile reformatory similarly established;

"regulation" shall mean any regulation made under this Proclamation;

"the Union" shall mean the Union of South Africa.

2. (1) Whenever any juvenile is convicted of an offence punishable with imprisonment, the court may order him to be sent to a juvenile reformatory and to be there detained for a period of not less than two years and not more than five years, or in the alternative may sentence him to imprisonment; provided that the period for which a juvenile is so detained in a juvenile reformatory shall expire at the date on which or before he attains the age of eighteen years.

(2) The court may further order that, at the expiration of any such sentence of imprisonment or detention in a reformatory or in lieu thereof or at any time during the currency thereof, the juvenile be apprenticed to some useful calling or occupation until he has attained the age of eighteen years.

(3) If for any reason a juvenile ordered to be so apprenticed cannot be apprenticed he shall be detained in a juvenile reformatory for the period for which he was ordered to be apprenticed.

(4) The trial of any such juvenile may in every case be held *in camera* and in some other place than in an ordinary court-room, provided that in such case the parent or guardian or other person interested in such juvenile shall have the right to be present thereat.

3. Whenever any court orders a juvenile to be detained in a juvenile reformatory a warrant shall be issued by the court for that purpose setting forth the offence for which the juvenile has been convicted, the period for which he is to be detained and his age, and the said warrant shall be transmitted to such officer as the Resident Commissioner may direct and shall be the authority for the conveyance of the juvenile to a juvenile reformatory and his detention therein. There shall be transmitted with such warrant by the court to such officer an account, in such form as the Resident Commissioner may prescribe, of the history and antecedents of the juvenile so far as may be ascertainable by the court.

4. The court before which any juvenile adult is convicted may, instead of imposing a sentence of imprisonment, order that he be detained in a juvenile adult reformatory for a period of not less than two and not more than five years and the provisions of the preceding section shall thereupon apply *mutatis mutandis* to such juvenile adult.

5. (1) Any person who has whether before or after the taking effect of this Proclamation been sentenced by any competent court of the territory to imprisonment with or without hard labour and who is still liable to serve such sentence or any portion thereof may by warrant signed by the High Commissioner be removed into custody in the Union in order that he may be detained in any prison or gaol thereof and imprisoned in accordance with any law in force in the Union authorizing such detention and imprisonment until the expiry of the sentence or during such portion thereof as may be deemed necessary.

(2) Any person who has been ordered to be detained in a juvenile reformatory or in a juvenile adult reformatory may while still subject to such order by warrant signed by the High Commissioner be removed into custody in the Union in order that he may be detained in any juvenile reformatory or juvenile adult reformatory as the case may be in the Union in accordance with any law in force in the Union authorizing such detention until the expiry of the period mentioned in the order or during such portion thereof as may be deemed necessary.

(3) No person shall be removed into custody in the Union under this section unless the original warrant of committal accompanies such person.

(4) Any person in course of removal under a warrant signed under this section shall be deemed to be in lawful custody whilst within the territory.

6. Any person who has been ordered by a competent court in the territory to be detained in a juvenile reformatory or in a juvenile adult reformatory shall pending his removal to any such reformatory in the Union be detained in the territory in such building and in the custody of such person as the Resident Commissioner may direct and subject to such conditions as may be prescribed by regulation.

7. The High Commissioner may from time to time make alter and repeal regulations providing for the removal of prisoners and of juveniles and juvenile adults under this Proclamation and for their custody pending such removal.

8. It shall be lawful for the High Commissioner on behalf of the Government of the territory to enter into an agreement with the Government of the Union on such terms and conditions as he may think fit—

(a) for the reception in the Union and detention in any prison or goal therein of any person sentenced by a competent court of the territory to imprisonment with or without hard labour; and

(b) for the reception in the Union and detention in any juvenile reformatory or juvenile adult reformatory therein of any person who being a juvenile or juvenile adult has been ordered by a competent court of the territory to be detained in a juvenile reformatory or juvenile adult reformatory.

The Agreement entered into on the 28th day of October 1920 between the High Commissioner and the Officer Administering the Government of the Union which is contained in the schedule to this Proclamation shall be deemed to have been lawfully entered into by the High Commissioner under the powers conferred by this section.

9. Nothing in this Proclamation contained shall prevent the conviction judgment and sentence of any person removed hereunder from the territory into lawful custody in the Union from being questioned within the territory in the same manner as if he had not been so removed and the sentence or order for detention of any such person may be remitted or his discharge ordered in the same manner and by the same authority as if he had not been so removed.

10. A person shall for the purposes of this Proclamation be presumed to be a juvenile or juvenile adult if it appears to the Court before which he is tried that he is within the limits of age prescribed for a juvenile or juvenile adult as the case may be.

11. (1) Acts Nos. 7 of 1879 and 8 of 1889 of the Cape of Good Hope in so far as they relate to the territory are hereby repealed.

(2) Proclamation No. 3 of 1898 shall be and is hereby repealed in its application to the Bechuanaland Protectorate but notwithstanding such repeal the provisions of the said Proclamation shall remain in force as regards any person removed thereunder from the territory to the Cape of Good Hope before the taking effect of this Proclamation.

12. Any person sentenced to imprisonment or to detention in a reformatory by a competent court of any territory in Africa, South of the Equator (being a portion of the British Dominions or a territory under the protection of the Crown) who is in course of removal into custody in the Union for the purpose of serving such sentence or portion of such sentence therein shall be deemed to be in lawful custody while in transit through the territory for the purpose of such removal.

13. This Proclamation may be cited for all purposes as the Bechuanaland Protectorate Reformatories and Prisoners and Juvenile Offenders Removal Proclamation 1921 and shall have force and take effect from the date of its publication in the *Gazette*.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Twenty-second day of November One thousand Nine hundred and Twenty-one.

ARTHUR FREDERICK,
High Commissioner.

By Command of His Royal Highness the
High Commissioner.

C. L. O'B. DUTTON,
Acting Imperial Secretary.

SCHEDULE.

AGREEMENT UNDER SECTION *fourteen* OF THE PRISONS AND REFORMATORIES ACT AMENDMENT ACT, No. 46 OF 1920.

Whereas it appears that provision has been made by section *fourteen* of the Prisons and Reformatories Act Amendment Act No. 46 of 1920, authorizing the Governor-General of the Union of South Africa to enter into an agreement with the Officer Administering the Government of any territory in South Africa south of the Equator (being a portion of the British Dominions or a territory under the protection of the Crown), for the purposes specified in the said section;

And whereas the High Commissioner for South Africa desires to enter into such an agreement as aforesaid on behalf of the Administration of the Bechuanaland Protectorate;

And whereas the Officer Administering the Government of the Union of South Africa has consented thereto;

Now, therefore, it is hereby agreed between the Officer Administering the Government of the Union of South Africa and the High Commissioner for South Africa that subject to the provisions of the said Act, and to conditions herein after appearing, an agreement shall exist

- (a) for the reception in the Union and detention in any prison or gaol therein of any person sentenced by a competent court of the Bechuanaland Protectorate according to law in force therein to imprisonment with or without hard labour; and
- (b) for the reception in the Union and detention in any juvenile reformatory or juvenile adult reformatory therein of any person who, being a juvenile or juvenile adult, has been ordered by a competent court of the Bechuanaland Protectorate according to law in force therein, to be detained in a juvenile or juvenile adult reformatory.

And the Officer Administering the Government of the Union of South Africa and the High Commissioner for South Africa hereby agree on behalf of the Union Government and the Administration of the Bechuanaland Protectorate, respectively, that when accommodation is available, and the Union Government has agreed to accept any prisoner or juvenile, there shall be paid by the Administration of the Bechuanaland Protectorate to the Union Government in respect of each prisoner or juvenile, the sum of three shillings per head per day, or such other amount as may be mutually agreed upon between the Protectorate Administration and the Prisons Department of the Union of South Africa, and that the Union Government shall be entitled to a refund of any expenses incurred by the latter Department in returning such persons to their homes on discharge from custody.

This agreement shall take effect as provided by law on the publication of a summary of the terms thereof in the *Gazette of the Union of South Africa*, and shall be terminated on three months' notice being given by either of the parties to the agreement.

Given under my Hand and the Great Seal of the Union of South Africa at Pretoria this Twenty-eighth day of October One thousand Nine hundred and Twenty.

J. ROSE INNES,
Officer Administering the Government.

Given under my Hand and Seal at Capetown this Sixteenth day of November One thousand Nine hundred and Twenty.

B. C. CARTER,
Brig.-Gen.,
High Commissioner for South Africa.