

**Ordinance
No. 3 of 1986**

ORDINANCE

*(Assented to by the Administrator-General on 10 December
1986)*

(Afrikaans text signed)

ORDINANCE

To provide for the recognition, appointment, conditions of service, deposition and dismissal of a chief of the Tswanas and of headmen on land which is communal land of the Tswanas; for the duties, functions and powers, including the exercise of civil and criminal jurisdiction in accordance with the traditional law and customs, of the chief and headmen, and for matters connected therewith.

BE IT ORDAINED by the Legislative Assembly of the Tswanas with the consent of the Administrator-General previously obtained for the purposes of section 14(1)(a)(ii) of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), and communicated to the Assembly by the Chairman of the Assembly, as follows:-

Definitions.

1. In this Ordinance, unless the context indicates otherwise –

- (i) “area”, in relation to a headman, means the area of jurisdiction determined in terms of section 5; (iii)
- (ii) “Cabinet” means the Cabinet constituted under section 23 of the South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985); (vi)
- (iii) “communal land” means land acquired by the Representative Authority as owner under a title deed

registered in the deeds office and from which it appears that such land was acquired with the consent of the Cabinet as communal land of the Tswanas;
(iv)

(iv) "Executive Committee" means the Executive Committee of the Tswanas; (vii)

(v) "headman" means a headman recognised or appointed under section 3; (v)

(vi) "misconduct" means misconduct as defined in section 16; (ix)

(vii) "population group" of "the Tswanas" means the Tswana population group referred to in section 3 of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980); (i)

(viii) "Representative Authority" means the Representative Authority of the Tswanas. (viii)

(ix) "the chief" means the chief of the Tswanas appointed or recognised under section 2. (ii)

Recognition of appointment of chief.

2. (1) The Executive Committee may, with the prior approval of the Cabinet and subject to the provisions of subsection (2), recognise or appoint one person as chief of the Tswanas, and may so depose or dismiss him.

(2) No person shall be qualified to be recognised or appointed as chief under subsection (1), unless –

(a) he is of or over the age of 21 years;

(b) he is a member of the population group; and

(c) he was ordinarily resident on communal land for a continuous period of not less than one year immediately before the date on which he is so recognised or appointed.

Status, powers, privileges, duties and functions of chief.

3. Subject to the provisions of this Ordinance or any other law, the chief shall have the status, powers and privileges conferred upon him by virtue of his office as the chief in accordance with the traditional law and customs of the Tswanas and he shall perform such duties and functions and may exercise such powers as may be imposed or conferred upon the chief by that law and customs.

Recognition or appointment of headmen.

4. (1) The Executive Committee may, subject to the provisions of subsection (2) of this section and section 5, and with the prior approval of the Cabinet, recognise or appoint six headmen.

(2) No person shall be qualified to be recognised or appointed as a headman under subsection (1), unless –

- (a) he is of or over the age of 21 years;
- (b) he is a member of the population group;
- (c) he was ordinarily resident on communal land for a continuous period of not less than one year immediately before the date on which he is so recognised or appointed.

Areas of jurisdiction of headmen.

5. (1) The Executive Committee shall divide the communal land in six areas (including the determination of the boundaries of such areas), and determine for every headman one such area as an area in respect whereof such headmen shall exercise or perform his powers, duties and functions conferred or imposed upon him by this Ordinance.

(2) Without derogating from the provisions of subsection (1), the Executive Committee shall in particular give consideration to –

- (a) community or diversity of interests of tribes or other communities of the Tswanas on communal land;
- (b) any geographical or physical features or surveyed land or boundaries on communal land;
- (c) sparsity or density of the population group on communal land; and
- (d) the traditional law and customs on communal land.

(3) The Executive Committee may, subject to the provisions of subsections (1) and (2) and after consultation with the headmen concerned, amend or alter from time to time the boundaries of any area so determined.

Status, powers,
privileges, duties and
functions of headmen.

6. (1) Any headman –

- (a) shall have the status, powers, rights and privileges conferred upon him by virtue of his office as headman in accordance with the traditional law and customs of the Tswanas;
- (b) shall be entitled in the proper performance of his powers, duties and functions, to the loyalty, respect, support and obedience of all the members of the population group;
- (c) shall perform the duties and functions and exercise the powers imposed on him by this Ordinance or the traditional law and customs of the Tswanas.

(2) Any headman shall, notwithstanding the provisions of subsection (1) –

(a) notify the Executive Committee, without delay, of

- (i) the death or serious injury of any person in his area as a result of violence or any unnatural causes;
- (ii) the outbreak or spreading of any infectious or contagious disease in his area;
- (iii) any abuse or damaging of property belonging to, or under the control of, the Representative Authority;
- (iv) any irregular receipt, use of wrongful appropriation of public moneys or funds of the Representative Authority;
- (v) the holding or the intended holding of any unauthorized assembly, gathering or meeting in his area;
- (vi) any unauthorized entry of any person in his area;
- (vii) any stock grazing unlawfully in his area;
- (viii) any state of unrest or dissatisfaction in his area;

(ix) anything in the interest of the community that the Executive Committee in his opinion ought to know;

(b) at the request of the Executive Committee –

(i) make known and explain the provisions of any new ordinance or regulation to the Tswanas in his area;

(ii) assist officers of the Representative Authority in the performance of any policy and official functions and duties of the Representative Authority in his area;

(iii) make recommendations, give advice or render assistance to the Executive Committee –

(aa) in connection with the determination, amendment or alteration of the grazing fees in his area;

(bb) in connection with the regulation or prohibition of farming activities in his area of persons who are not *bona fide* farmers;

(cc) in connection with the limitation of the numbers of stock (including large and small stock) which may be kept in his area;

(dd) in connection with the granting of grazing rights to newcomers in his area;

(ee) in connection with the action to be taken against a defaulter of rental and grazing fees in his area; and

(ff) in connection with civil defence matters; and

(iv) give a written report to the Executive Committee in respect of any action performed by him in terms of the provisions of this Ordinance;

- (c) endeavour to promote the interests of the community in his area and to support it actively; and
- (d) maintain local security in relation to the community in his area.

Civil and criminal jurisdiction.

7. (1) Any headman shall, subject to the provisions of this Ordinance or any other law, have power –

- (a) in his area to hear and to adjudicate in accordance with the traditional law and customs of the Tswanas, all civil cases and matters arising in that area between members of the population group;
- (b) in his area, with the written authorization of the chief, to hear and to adjudicate in accordance with the traditional law and customs of the Tswanas, all criminal cases arising in that area and in which only members of the population group are involved;
- (c) to exercise such powers and perform such functions in relation to the civil and criminal jurisdiction referred to in this section, as may be conferred upon or assigned to or imposed on him in terms of this Ordinance or any other law.

(2) The jurisdiction referred to in subsection (1) shall be exercised, as to persons, causes of action or offences, the procedure at any trial, the punishment, the manner of execution of any judgment or sentence and the manner of imposition of payment of fines, in accordance with the traditional law and customs observed by the population group in the area of the headmen concerned: Provided that, notwithstanding the provisions of that law and customs or any other law, any headman authorized to hear criminal cases in terms of the provisions of subsection (1)

(a) may impose a fine which shall not exceed R500; and

(b) shall not impose any punishment involving death, mutilation or grievous bodily harm.

(3) Any headman authorized to hear criminal cases in terms of the provisions of subsection (1), may, subject to the provisions of subsection (2)(b), impose corporal punishment in accordance with the traditional law and customs of the Tswanas.

Recording of proceedings.

8. Any headman shall duly record the evidence in all cases heard by him, and any sentence imposed by him shall be recorded in a case register.

Duties of headmen in respect of moneys and fines received.

9. When any money or fine is paid, the headman concerned shall furnish a written receipt of payment to the accused or judgment debtor, as the case may be, and the date and amount so paid shall be recorded in the case register.

Appeals.

10. (1) Any person convicted by any headman in any criminal case in terms of the jurisdiction exercised under the provisions of section 7, may, within 14 days by written notice addressed to the chief and delivered to him or his authorized representative, appeal against his conviction and sentence, to the magistrate in whose area of jurisdiction the trial occurred.

(2) At the hearing of the appeal referred to in subsection (1), the magistrate shall hear the available evidence and keep record of the proceedings before him and he shall thereafter –

(a) confirm the conviction, and –

(i) confirm the sentence imposed by the headman and order that such sentence be executed or be complied with; or

(ii) set aside the sentence imposed by the headman concerned and impose a suitable sentence; or

- (iii) impose a sentence of imprisonment for a period not exceeding three months to be wholly suspended on condition that any fine confirmed in terms of subparagraph (i) or imposed in terms of subparagraph (ii), be paid; or

- (b) allow the appeal and set aside the conviction and sentence.

Deposit of moneys and fines.

11. (1) All moneys and fines received or collected by any headman in terms of sentences imposed by him or sentences imposed or confirmed in terms of section 10(2)(a) by the magistrate concerned, shall as soon as possible after receipt or collection thereof, be deposited into the Revenue fund of the Representative Authority.

(2) A written receipt of such deposit shall be furnished to the headman concerned or his authorized representative who has made the deposit.

Keeping in safe custody of documents.

12. Any headman shall keep in safe custody all documents, receipts, reports or registers, or any copy thereof, as the case may be, to be received issued, furnished or kept by him in terms of the provisions of this Ordinance, and such documents receipts, reports or registers shall be made available by him at request for inspection, by the Executive Committee or any officer appointed for that purpose by the Executive Committee.

Conditions of service.

13. (1) The Executive committee may, with the prior approval of the Cabinet, determine from time to time the conditions of service (including the payment of any emoluments, allowances and pensions) of the chief and headmen.

(2) The emoluments, allowances and pensions referred to in subsection (1) shall be paid from moneys appropriated by law for that purpose.

Vacation of office by headmen.

14. A headman shall vacate his office –

- (a) if he, by letter addressed to the Executive Committee, resigns as headman;
- (b) if he is absent from the communal land, without the consent of the Executive Committee, for a continuous period of more than three months; or

- (c) if he is convicted of an offence in respect of which he is sentenced to imprisonment without the option of a fine.

Dismissal of headmen.

15. The Executive Committee may, with the prior approval of the Cabinet, discharge any headman from office

- (a) on account of continued ill-health;
- (b) on account of unfitness for his duties or incapacity to carry them out efficiently;
- (c) on account of misconduct.

Definition of misconduct.

16. Any headman shall be guilty of misconduct if he –

- (a) contravenes any provision of this Ordinance or fails to comply with any provision thereof, if it is his duty to comply with such provision;
- (b) is negligent or indolent in the performance of his official duties;
- (c) in public criticises the administration of the Representative Authority;
- (d) conducts himself in a disgraceful, improper or unbecoming manner;
- (e) uses intoxicating liquor excessively, or uses narcotic drugs without a prescription from a medical practitioner;
- (f) without the permission of the Executive Committee, accepts or demands in respect of the performance or neglect of his official duties any commission, fee or other reward to which he is not entitled by virtue of his office, or fails to report forthwith to the Executive Committee the offer of any such commission, fee or other reward;
- (g) appropriates or improperly uses any property of the Representative Authority or the Government of the territory of South West Africa without committing an offence;
- (h) commits an offence; or
- (i) refuses without leave or valid reason to perform his official duties.

Amendment of Proclamation 15 of 1928.

17. (1) Subject to the provisions of subsection (2), the law mentioned in the Schedule is hereby amended to the extent set out in the third column of the said Schedule.

(2) Anything done under any provision referred to in subsection (1), and which may be done under any provision of this Ordinance, shall be deemed to have been done under that provision.

Short title and commencement.

18. This Ordinance shall be called the Tswana Chief and Headmen Ordinance, 1986, and shall be deemed to have come into operation on 1 December 1984.

SCHEDULE

LAW AMENDED (Section 17(1))

Number and year of law	Short title	Extent of amendment
Proclamation 15 of 1928	Native Administration Proclamation, 1928	<p>(a) The Amendment of section 1 by the deletion of paragraphs (a), (b), (c), (d) and (g);</p> <p>(b) The amendment of section 3 –</p> <p>(i) by the substitution in subsection (2) for the expression “paragraph (b), (d), or” of the expression “paragraph”; and</p> <p>(ii) by the deletion of subsection (3).</p>