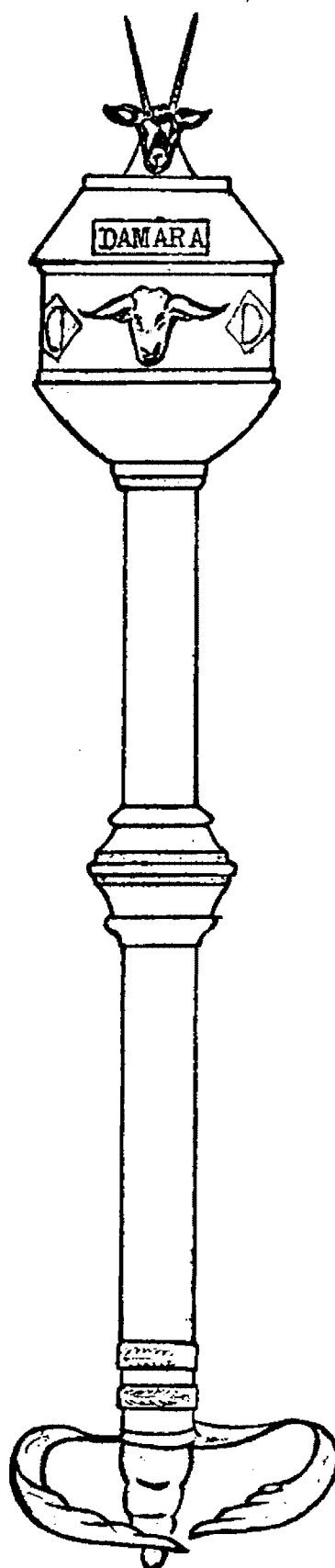


**DAMARA GEMEENSKAPS- EN
STREEKOWERHEDE EN OPPERHOOF EN
HOOFMANNE ORDONNANSIE, 1986**

Ordonnansie
No. 2 van 1986



Ordinance
No. 2 of 1986

**DAMARA COMMUNITY AND REGIONAL
AUTHORITIES AND PARAMOUNT CHIEF
AND HEADMEN ORDINANCE, 1986**

*(Assented to by the Administrator-General
on 23 Februarie 1987)*

(Afrikaans text signed)

ORDINANCE

To provide for the recognition, establishment, replacement, constitution and powers of community and regional authorities in respect of communities on land which is communal land of the Damaras, including the recognition, appointment, deposition and dismissal, with the prior approval of the Cabinet, of a Paramount Chief of the Damaras and of headmen; the discipline, retirement, pensioning and other conditions of service of a Paramount Chief and headmen; the duties, functions and powers, including the exercise of civil and criminal jurisdiction in accordance with the traditional law and customs, of community councils and the council of headmen; and to provide for matters connected therewith.

BE IT ORDAINED by the Legislative Assembly of the Damaras, as follows:-

Definitions.

1. In this Ordinance, unless the context indicated otherwise -

- (i) "Cabinet" means the Cabinet constituted under section 23 of the South West African Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985); (vii)
- (ii) "comunal land" means, subject to the provisions of section 29 of the Representative Authority of the Damaras Proclamation, 1980 (Proclamation AG. 32 of 1980), the communal land of the Damaras referred to in section 28 of the said Proclamation; (iii)

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- (iii) "community council" means a community council established under section 5(1); (iv)
- (iv) "council of headmen" means the council of headmen established under section 9; (vi)
- (v) "councillor" means a councillor elected under section 5(2)(b); (ix)
- (vi) "Executive Committee" means the Executive Committee of the Damaras; (xii)
- (vii) "headman" means a headman elected and recognised or appointed under section 3, as well as his assignee; (v)
- (viii) "Legislative Assembly" means the Legislative Assembly of the Damaras; (xv)
- (ix) "messenger" means a messenger appointed under section 14; (i)
- (x) "misconduct" means misconduct as defined in section 19; (xiv)
- (xi) "regional council" means a regional council established under section 7(1); (xi)
- (xii) "Representative Authority" means the Representative Authority of the Damaras; (xiii)
- (xiii) "senior headman" means a senior headman appointed under section 7(4); (x)
- (xiv) "the Damaras" means the Damara population group referred to in section 3 of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980); (ii)
- (xv) "The Paramount Chief" means the Paramount Chief of the Damaras elected and recognised or appointed under section 12, as well as an acting Paramount Chief; (viii)
- (xvi) "ward" means a ward referred to in section 2. (xvi)

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Wards.

2. (1) For the purposes of this Ordinance the Executive Committee shall divide the communal land in twelve wards, including the determination of the boundaries of such wards.

(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 Damaras;
- (b) any geographical or physical features or surveyed land or boundaries on communal land;
- (c) sparsity or density of the Damaras 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 referred to in section 3, amend or alter from time to time the boundaries of any ward so determined.

Election and recognition
or appointment of
headmen.

3. (1) The inhabitants of every ward shall elect for that ward a headman in a manner prescribed by the Executive Committee.

(2) A headman so elected, shall be recognised or appointed as such by the Executive Committee with the prior approval of the Cabinet.

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

- (a) he is of or over the age of 25 years; and
- (b) he resides in the community he represents.

(4) Any headman shall hold his office for a period of five years from the date on which he is recognised or appointed as such.

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Status, privileges,
powers, duties and func-
tions of headmen.

4. Any headman –

- (a) shall have the status and privileges conferred upon him by virtue of his office as headman in accordance with the traditional law and customs of the Damaras;
- (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 Damaras;
- (c) shall preside at the meetings of the community council of the ward concerned for which he is elected and recognised or appointed; and
- (d) shall perform the duties and functions and exercise the powers imposed or conferred on him by his Ordinance or the traditional law and customs of the Damaras.

Establishment and
constitution of commu-
nity councils.

5. (1) There is hereby established a community council for every ward.

(2) A community council shall consist of –

- (a) the headman of the ward concerned; and
- (b) three councillors, elected by the inhabitants of the ward concerned in a manner prescribed by the Executive Committee.

(3) Any councillor shall hold his office for a period of five years from the date on which he is elected as such.

(4) No person shall be qualified to be elected as councillor under subsection 2(b), unless –

- (a) he is of or over the age of 25 years; and
- (b) he resides in the community he represents.

Powers, duties and func-
tions of community
councils.

6. Any community council shall –

- (a) notify the Executive Committee without delay of –

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- (i) the death or serious injury of any person in his ward as a result of violence or any unnatural causes;
 - (ii) the outbreak or spreading of any infectious or contagious disease in his ward;
 - (iii) any abuse or damaging of property belonging to or under the control of the Representative Authority;
 - (iv) any irregular receipt, use or 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 ward;
 - (vi) any unauthorized entry of any person in his ward;
 - (vii) any stock grazing unlawfully in his ward;
 - (viii) any state of unrest or dissatisfaction in his ward;
 - (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 inhabitants in his ward;
 - (ii) assist officers of the Representative Authority in the performance of any policy and official functions and duties of the Representative Authority in his ward;
 - (iii) make recommendations, give advice or render assistance to the Executive Committee –
 - (aa) in connection with the determination, amendment or alteration of grazing fees in his ward;

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- (bb) in connection with the regulation or prohibition of farming activities in his ward 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 ward;
 - (dd) in connection with the granting of grazing rights to newcomers in his ward;
 - (ee) in connection with the action to be taken against a defaulter of rental and grazing fees in his ward; and
 - (ff) in connection with matters regarding the acquisition, alienation, grant, transfer, occupation and possession of or any right to communal land in his ward; and
 - (gg) 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 ward and to support it actively;
 - (d) maintain local securities in relation to the community in his ward; and
 - (e) perform the duties and functions and exercise the powers imposed or conferred on him by this Ordinance or the traditional law and customs of the Damaras.

Establishment and
constitution of regional
councils.

7. (1) There is hereby established three regional councils, known as the Southern Regional Council, the Central Regional Council and the Northern Regional Council.

(2) Every regional council shall consist of the community councils of the wards as determined by the Executive Committee from time to time.

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(3) The Executive Committee shall determine from time to time the seat of every regional council.

(4) The Paramount Chief referred to in section 12 shall, with the prior approval of the Cabinet, appoint for every regional council from the headmen of such regional council a senior headman as chairman.

(5) Any senior headman shall hold his office for a period of five years from the date on which he is appointed as such.

Powers, duties and functions of regional councils.

8. Any regional council shall –

- (a) promote the culture of the Damaras in his region and shall in this connection perform the orders of the council of headmen referred to in section 10(1)(c);
- (b) advise the inhabitants of his region regarding regional matters;
- (c) notify the Executive Committee without delay of anything in the interest of the community in his region that the Executive Committee in his opinion ought to know; and
- (d) in general perform the duties and functions and exercise the powers which the Executive Committee, after consultation with the council of headmen, may instruct upon it.

Establishment and constitution of council of headmen.

9. (1) There is hereby established a council of headmen consisting of 16 members with its seat at Okombahe.

(2) The council of headmen shall consist of –

- (a) the Paramount Chief referred to in section 12;
- (b) three senior headmen appointed by the Paramount Chief as prescribed in section 7(4); and
- (c) the headman of every ward.

(3) The vacancies occurred in the council of headmen by reason of the recognition or appointment of the Paramount Chief or the appointment of the senior headmen by the Paramount Chief, shall be filled by the Executive Committee on recommendation of the Paramount Chief and the senior headmen.

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Powers, duties and functions of council of headmen.

10. (1) The council of headmen shall promote the culture of the Damaras and see to it that it be unscathed for the posterity and shall in this connection –

- (a) give guidance to regional councils concerning promotion of culture;
- (b) advise the Executive Committee; and
- (c) perform orders of the Executive Committee.

(2) The council of headmen shall perform the duties and functions and exercise the powers imposed or conferred on it by this Ordinance or the traditional law and customs of the Damaras.

Attendance of sessions of council of headmen.

11. Any member of the Legislative Assembly or of the Executive Committee which is not a member of the council of headmen may attend any session of the council of headmen and participate in the discussions, but he shall have no right to vote at such session.

Election and recognition or appointment of Paramount Chief.

12. (1) The headmen shall assemble, within 21 days after the election and recognition or appointment of all headmen in terms of section 3, at Okombahe to elect in consultation with the Damara royal house, the Paramount Chief who shall preferably be from the royal blood-line.

(2) A Paramount Chief so elected, shall be recognised or appointed as such by the Executive Committee with the prior approval of the Cabinet.

(3) If the office of Paramount Chief cannot be filled or the Paramount Chief is for any reason unable to perform his powers, duties or functions, an acting Paramount Chief may be elected in the manner set out in subsection (1).

(4) The Paramount Chief, except an acting Paramount Chief who holds his office for a period not exceeding five years from the date on which he is recognised or appointed as such, shall hold his office as long as he maintains it worthily and according to the law and customs of the Damaras.

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Status, privileges,
powers, duties and func-
tions of Paramount
Chief.

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

(2) The Paramount Chief shall be entitled in the proper performance of his powers, duties and functions, to the loyalty, respect, support and obedience of all the Damaras originally of the following tribes:

- (a) †Aodaman;
- (b) Auobdaman;
- (c) Dâuredaman;
- (d) †Gaiodaman;
- (e) †Garidaman;
- (f) †Gowanin;
- (g) †Haû †NâIN or Riemvasmakers;
- (h) Hâgo and †Gâ-ödaman;
- (i) †Khomanin;
- (j) †Kusedaman;
- (k) Namidaman;
- (l) Namadaman or Oorlams;
- (m) †Oe†gân; and
- (n) Tsoaxudaman.

Appointment of mes-
sengers.

14. (1) The Executive Committee shall appoint for every ward a messenger.

(2) A messenger shall hold his office for a period of five years from the date of his appointment as such.

Powers, duties and func-
tions of messengers.

15. A messenger —

- (a) shall act as clerk of the community council of the ward for which he is appointed and shall in this connection exercise the powers and perform the duties and functions conferred or imposed on him by the community council, or this Ordinance or the traditional law and customs applied by his community; and
- (b) shall perform all other duties and functions and exercise all the powers imposed or conferred on him by this Ordinance or the traditional law and customs of the Damaras.

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Conditions of service.

16. (1) The Executive Committee may determine from time to time the conditions of service (including the payment of any emoluments, allowances and pensions) of the Paramount Chief, senior headmen, headmen, councillors and messengers.

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

(3) If the Paramount Chief or any of the senior headmen, headmen, councillors or messengers is also a member of the Executive Committee or the Legislative Assembly, he shall receive only half of the emoluments and allowances whereto he is entitled as Paramount Chief, senior headman, headman, councillor or messenger.

(4) By the determination of conditions of service under subsection (1) the period of satisfactory service, whether continuous or not, rendered by the person concerned shall be taken into account.

Vacation of offices.

17. A Senior headman, headman, councillor or messenger shall vacate his office –

- (a) if he, by letter addressed to the council of headmen, resigns as such;
- (b) if he is absent from his stand, without the consent of the council of headmen, for a continuous period of more than three months;
- (c) if he is convicted of an offence in respect of which he is sentenced to imprisonment without the option of a fine; or
- (d) if his term of office has expired: Provided that –
 - (i) in the case of a headman, he may be re-elected and recognized or appointed;
 - (ii) in the case of a senior headman or messenger, he may be re-appointed; and
 - (iii) in the case of a councillor, he may be re-elected.

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Dismissal of Paramount
Chief, senior headman,
headman, councillor, or
messenger.

18. The Executive Committee may –

- (a) in consultation with the Paramount Chief, discharge any councillor or messenger;
- (b) with the prior approval of the Cabinet and after consultation with the Damara royal house, discharge any Paramount Chief; and
- (c) with the prior approval of the Cabinet, discharge any senior heaman or headman from his office –
 - (i) on account of continued ill-health;
 - (ii) on account of unfitness for his duties or incapacity to carry them out efficiently; or
 - (iii) on account of misconduct.

Definition of misconduct.

19. Any Paramount Chief, senior headman, headman, councillor or messenger 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) conducts himself in a disgraceful, improper or unbecoming manner;
- (d) uses intoxicating liquor excessively, or uses narcotic drugs without a prescription from a medical practitioner;
- (e) 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;
- (f) appropriates or improperly uses any property of the Representative Authority or the Government of the territory of South West Africa without committing an offence;

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- (g) commits an offence; or
- (h) refuses without leave or valid reason to perform his official duties.

Retirement owing to old age.

20. Notwithstanding anything to the contrary in any law, the Executive Committee may –

- (a) in consultation with the Paramount Chief, retire any councillor or messenger;
- (b) after consultation with the Cabinet and the Damara royal house, retire any Paramount Chief; and
- (c) after consultation with the Cabinet, retire any senior headman or headman on pension on attaining the age of 65 years.

Filling of vacancies.

21. If the office of a Paramount Chief, or any senior headman, headman, councillor or messenger becomes vacant –

- (a) before expiration of his period of office, the office concerned shall be filled for the unexpired period of office; or
- (b) by expiration of his period of office, the office concerned shall be filled for the new period of office

in the appropriate manner in accordance with the provisions of this Ordinance.

Civil jurisdiction.

22. (1) Any community council shall, subject to the provisions of this Ordinance or any other law, be competent to try and to adjudicate all civil actions arising between Damaras in accordance with the traditional law and customs of the Damaras.

(2) The jurisdiction of a community council as to persons and causes of action, the procedure at any hearing and the manner of execution of any decision, judgment, sentence or order by any messenger, shall be exercised in accordance with the traditional law and customs observed in the ward concerned.

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(3) The provisions of this section shall not be construed as empowering a community council to try a civil action –

- (a) in a dispute between a member of the Damaras and a member of another population group, unless such member of the other population group agrees to such hearing: Provided that the headman shall, at the commencement of such hearing, inform the person who is not a member of the Damaras that he may object to the hearing of the action by the community council;
- (b) where the status of a person is in question;
- (c) where the nullity of dissolution of a marriage is in question;
- (d) where the value of an object in dispute is more than R500.

Criminal jurisdiction.

23. (1) A community council shall, subject to the provisions of this Ordinance or any other law, be competent to try and to adjudicate in accordance with the traditional law and customs of the Damaras, all criminal cases where members of the Damaras are concerned.

(2) The jurisdiction of a community council as to persons and offences, the procedure at any trial and the manner of execution of any judgement or sentence by any messenger, shall be exercised in accordance with the traditional law and customs observed in the ward concerned.

(3) the provisions of this section shall not be construed as –

- (a) empowering a community council to try the following crimes –
 - (i) murder;
 - (ii) treason;
 - (iii) rape;
 - (iv) culpable homicide;
 - (v) public violence;

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- (vi) any offence relating to the unlawful trading in or possession of fire-arms, ammunition, explosives, drugs or precious stones; and
- (vii) any offence where the accused is not a member of the Damaras, unless such accused agrees to the trial;
- (b) empowering a community council to impose any punishment resulting in death, mutilation or grievous bodily harm;
- (c) empowering a community council to impose a fine not exceeding R500;
- (d) prohibiting a community council, subject to the provisions of paragraph (b), to impose corporal punishment in accordance with the traditional law and customs in the ward concerned: Provided that only unmarried males below the apparent age of 30 years may be imposed corporal punishment.

Appeals.

24. (1) (a) Any person who, in a civil action, feels aggrieved by a decision or judgement of a community council or any sentence or order given thereunder, may, by written notice addressed to the council of headmen and delivered to the headman of his ward, appeal within 30 days to the council of headmen against such decision, judgement, sentence or order, or against the decision, judgement, sentence and order, as the case may be: Provided that no appeal shall be allowed where the value of the object in dispute is less than R50.
- (b) Any person who, in a criminal case, feels aggrieved by a conviction or sentence of a community council, may, by written notice to the council of headmen and delivered to the headman of his ward, appeal within 30 days to the council of headmen against such conviction or sentence, or against both such conviction and sentence, as the case may be.

(2) The headman shall, within 14 days of the receipt of the notice of appeal, furnish the council of headmen with the appeal, the reason for the judgment and the record of proceedings by sending or delivering it to the Paramount Chief.

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(3) At the hearing of such appeal the council of headmen shall hear and record the relevant evidence and it shall thereafter –

(a) in the case of a civil action –

(i) confirm the decision or judgment, or both the decision and judgment, as the case may be, and –

(aa) confirm the sentence or order by the community council or both the sentence and order, as the case may be, and direct that such sentence or order, or both such sentence and order, as the case may be, be executed or be complied with; or

(bb) set aside such sentence or order, or both such sentence and order, as the case may be, and impose a suitable sentence or order, or both a suitable sentence and order, as the case may be; or

(ii) allow the appeal and set aside the decision, judgment, sentence or order, or the decision, judgment, sentence and order, as the case may be;

(b) in the case of a criminal case –

(i) confirm the conviction, and –

(aa) confirm the sentence imposed by the community council and direct that such sentence be executed or be complied with; or

(bb) set aside such sentence and impose a suitable sentence; or

(ii) allow the appeal and set aside the conviction and sentence.

(4) Any headman of the community council against whose decision, judgment, sentence or order or such decision, judgment, sentence and order, as the case may be, has been appealed, shall have no session on the council of headmen for the purposes of hearing of such appeal.

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(5) Where an appeal has been lodged against any decision, judgment, sentence or order or against such decision, judgment, sentence and order as the case may be, the execution of the sentence or order shall be suspended pending the result of the appeal.

Penalty for contempt of
community council dur-
ing hearing.

25. Any person who, at a hearing in terms of the provisions of section 22 and 23, wilfully insults any member of a community council, or wilfully interrupts the proceedings of the community council or otherwise misbehaves himself in the place where the hearing is held, shall be liable to be sentenced to a fine not exceeding R50.

Recording of procee-
dings.

26. Any headman shall duly record the evidence in all cases heard by the community council and any sentence imposed by such community council shall be recorded in a case register.

Duties of headman in
respect of moneys and
fines received.

27. 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.

Deposit of moneys and
fines.

28. (1) All moneys and fines received or collected by any headman in terms of sentences imposed by the community council or sentences imposed or confirmed in terms of section 24(3) by the council of headmen 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.

29. 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.

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Amendment and repeal
of laws.

30. (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are 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 com-
mencement.

31. This Ordinance shall be called the Damara Community and Regional Authorities and Paramount Chief and Headmen Ordinance, 1986, and shall be deemed to have come into operation on 1 December 1980.

SCHEDULE

LAWS AMENDED AND REPEALED
(Section 30(1))

No. and year of law	Short title	Extent of amendment
Proclamation 9 1924	Native Reserves Trust Funds Admin- istration Procla- mation, 1924	The repeal of the whole.
Proclamation 15 of 1928	Native Administra- tion Proclamation, 1928	(a) The amendment of sec- tion 1 by the deletion of paragraphs (a), (b), (c), (d) and (g); (b) The amendment of sec- tion 3 – (i) by the substitution in subsection (2) for the expression “para- graph (b), (d) or” of the expression “para- graph”; and (ii) by the deletion of subsection (3).
Proclamation R.348 of 1967		The repeal of the whole in so far as it applies to the Zess- fontein Native Reserve.