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OF THE
REPUBLIC OF NAMIBIA

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GOVERNMENT NOTICE

No. 82 Promulgation of Inquests Act, 1993 (Act 6 of 1993), of the National
Assembly 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 82

1993

**PROMULGATION OF ACT OF
THE NATIONAL ASSEMBLY**

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 6 of 1993: Inquests Act, 1993.

ACT

To provide for the holding of inquests in cases of deaths or alleged deaths apparently occurring otherwise than from natural causes; and to provide for matters connected therewith.

(Signed by the President on 23 July 1993)

ARRANGEMENT OF SECTIONS

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SCHEDULE

Laws repealed

BE IT ENACTED by the Parliament of the Republic of Namibia,
as follows:-

Definitions.

1. In this Act, unless the context otherwise indicates -

“incident”, in relation to the death of a person, means any occurrence during which an injury was sustained or any other event occurred which gave rise to the death;

“judicial officer” means a judge of the High Court of Namibia, a regional magistrate or a magistrate;

“magistrate” includes an additional magistrate and an assistant magistrate, but not a regional magistrate;

“member of the police” means a member of the Namibian Police Force;

“Minister” means the Minister of Justice;

“Permanent Secretary” means the Permanent Secretary: Justice;

“public prosecutor” means a public prosecutor attached to the magistrate’s court of the district in which an inquest is held or to be held under this Act;

“regional magistrate” means a magistrate appointed under section 9 of the Magistrates’ Courts Act, 1944 (Act 32 of 1944), to the court for a regional division; and

“this Act” includes regulations made under section 25.

Duty to report unnatural deaths.

2. (1) Any person who has reason to believe that a person has died an unnatural death, shall as soon as possible report accordingly to a member of the police, unless such person has reason to believe that a report in that regard has been or will be made by any other person.

(2) Any person who without good cause fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Investigation of circumstances of certain deaths.

3. Subject to the provisions of any other law providing for the investigation of the circumstances of the death of persons, any member of the police who has reason to believe that a person has died an unnatural death, shall -

(a) investigate or cause to be investigated the circumstances of the death or alleged death; and

(b) report or cause to be reported the death or alleged death to the magistrate of the district concerned, or to a person designated by that magistrate.

Post-mortem examinations.

4. (1) Where the body of a deceased person who allegedly has died an unnatural death is available, the magistrate to whom the death is reported, shall, if he or she considers it expedient in the interests of justice, direct the district surgeon or any other medical practitioner to make an examination of the body for the purpose of determining the cause of death and to make a report thereon.

(2) A district surgeon or other medical practitioner who examines a body pursuant to a direction under subsection (1), may, if he or she considers it necessary, examine or cause to be examined any internal organ or part of the body or any of the contents thereof.

(3) For the purposes of an examination referred to in subsection (2) -

- (a) any internal organ or part of a body, or any of the contents thereof, may be removed from the body;
- (b) the body or any internal organ or part or contents of a body removed therefrom, may be moved to any place.

(4) A body which has been interred may, with the written permission of the Prosecutor-General or the magistrate within whose area of jurisdiction the body has been interred, be exhumed for the purpose of an examination directed in terms of subsection (1).

(5) A magistrate within whose area of jurisdiction an examination is to be made in terms of subsection (1), may, on application of a person who satisfies the magistrate that he or she has a substantial interest in the examination, consent that a medical practitioner nominated by that person be present when the examination is carried out, and no person other than such a nominated medical practitioner, a member of the police or any other person allowed by the medical practitioner conducting the examination, shall be present at the examination.

(6) Any person who hinders or obstructs a medical practitioner or a member of the police, or any person acting on the instructions of a medical practitioner or a member of the police, in exercising a power or performing a duty under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Report to public prosecutor.

5. A member of the police who investigates the circumstances of a person's death or alleged death, shall submit a report thereon, together with all relevant statements, documents and information, to the public prosecutor, who may, if he or she considers it necessary, call for additional information regarding the death.

When inquest to be held.

6. (1) When criminal proceedings are not instituted in connection with the death or alleged death of a person, the public prosecutor shall submit the report, statements, documents and information received by him or her in terms of section 5 to the magistrate of the district concerned.

(2) If on the information submitted to a magistrate in terms of subsection (1) it appears to the magistrate that a death has occurred and that the death was not due to natural causes, he or she shall, subject to the provisions of section 7, proceed to hold an inquest as to the circumstances and cause of the death.

(3) Where an inquest is to be held by a judicial officer other than the magistrate to whom the report, statements, documents and information referred to in subsection (1) were submitted, such magistrate shall transmit them to the judicial officer by whom the inquest is to be held.

Judicial officer who is to hold inquest.

7. (1) Subject to the provisions of subsections (2) and (3), an inquest shall be held -

- (a) by the magistrate of the district in which the incident is alleged to have occurred; or
- (b) in a case where the incident is alleged to have occurred on sea or in the air, irrespective as to whether the person concerned died while still on sea or in the air or subsequently on land, by the magistrate of the district where such person or such person's body arrived by ship or aircraft or was brought ashore or was found, as the case may be.

(2) Notwithstanding the provisions of subsection (1), the Minister, or the Permanent Secretary if authorized thereto by the Minister, may, where it is not possible to determine with certainty the district, in accordance with subsection (1), where an inquest is to be held, designate the magistrate of any district by whom the inquest shall be held.

(3) The Minister may at any time -

- (a) designate a regional magistrate to hold an inquest at a place determined by the Minister; or
- (b) request the Judge President of the High Court of Namibia to designate a judge of that Court to hold an inquest.

(4) A judge designated in terms of subsection (3)(b) to hold an inquest, may hold the inquest at any place which such judge may from time to time determine.

Two or more deaths which are connected.

8. (1) Where two or more persons are believed to have died an unnatural death as a result of the same incident, the Prosecutor-General or the public prosecutor may request the judicial officer concerned to hold a joint inquest into the deaths of the persons involved.

(2) A judicial officer to whom a request in terms of subsection (1) has been made may, if he or she considers it expedient, order that a joint inquest be held.

(3) The Minister, or the Permanent Secretary if authorised thereto by the Minister, may, on the recommendation of the Prosecutor-General, and if the Minister or Permanent Secretary, as the case may be, considers it expedient in the interests of the efficient administration of justice -

- (a) order that a joint inquest be held into two or more deaths which, although not resulting from the same incident, are connected; and
- (b) designate the place where such a joint inquest is to be held.

(4) An order under subsection (3) may be issued in respect of deaths which have occurred in the same district or in different districts.

Notice of inquest to be given.

9. (1) Subject to the provisions of subsection (2), the judicial officer by whom an inquest is to be held shall cause reasonable notice of the time, date and place of the inquest to be given to the surviving spouse of the deceased person, and if there be no surviving spouse, or if his or her whereabouts are not known to the judicial officer and cannot readily be ascertained by him or her, to any relative of the deceased person, if the whereabouts of such a relative is known to the judicial officer.

(2) The notice required to be given by subsection (1), may be dispensed with if -

- (a) such spouse or relative, as the case may be, has been or will be subpoenaed to appear as a witness at the inquest; or

- (b) in the opinion of the judicial officer, the giving of such notice will unduly delay the holding of the inquest.

Witnesses and evidence at inquests.

10. (1) The judicial officer holding an inquest may cause any person to be subpoenaed to appear at the inquest to give evidence or to produce any book or document or thing in his or her possession or under his or her control.

(2) Except as otherwise provided by this Act, the laws governing criminal trials shall *mutatis mutandis* apply to securing the attendance of witnesses at an inquest, their examination, the recording of evidence given by them, the payment of allowances to them and the production of documents and things.

Assessors at inquests.

11. (1) A judge may at any time, and a regional magistrate or a magistrate may with the approval of the Minister, or the Permanent Secretary if authorized thereto by the Minister, summon to his or her assistance any person who has, or any two persons who have, in his or her opinion, experience in the administration of justice or skill in any matter which may have to be considered at an inquest, to sit with him or her as assessor or assessors.

(2) Before the commencement of an inquest, an assessor shall take an oath or make an affirmation that he or she will, on the evidence placed before him or her, make a true finding in accordance with the provisions of section 18.

(3) An oath or affirmation referred to in subsection (2) shall be administered by the judicial officer holding the inquest in question.

(4) Where at an inquest a judicial officer sits with an assessor or assessors -

- (a) the judicial officer alone shall decide a question of law, or whether a particular matter constitutes a question of law or a question of fact, and he or she may for such purpose sit alone;
- (b) the decision of the majority on the facts shall be the decisive finding, but where the judicial officer sits with one assessor, the decision of the judicial officer shall, in the event of a difference of opinion, be the decisive finding.

(5) If at any time during an inquest an assessor dies or becomes unable to act as assessor, the judicial officer may -

- (a) direct that the inquest be proceeded with without that assessor;
- (b) summon any person to his or her assistance in the place of that assessor, in which case the judicial officer may cause any person who has already given evidence at the inquest to be subpoenaed to give evidence afresh.

(6) An assessor who is not in the full-time employment of the State shall be entitled to such compensation in respect of expenses incurred by him or her in connection with his or her attendance at the inquest and in respect of his or her services as assessor as he or she would be entitled to receive if he or she were an assessor acting at a criminal trial.

When inquest to be held in public.

12. (1) Unless the giving of oral evidence is dispensed with under this Act or the judicial officer concerned directs otherwise under subsection (2), an inquest shall be held in public.

(2) If it appears to the judicial officer who holds an inquest that it would be in the interest of the safety of any witness or of good order or of the administration of justice that -

- (a) the inquest be held behind closed doors; or
- (b) the presence of any particular person is not desirable,

the judicial officer may direct that members of the public in general or such person shall not be present at the inquest or during any particular part of the proceedings thereof.

(3) If it appears to the judicial officer who holds an inquest that the safety of any person may be endangered if he or she testifies at the inquest, the judicial officer may direct that the identity of that person shall not be revealed, or that it shall not be revealed for a period specified by the judicial officer or otherwise than in accordance with conditions determined by the judicial officer.

(4) Any person who fails to comply with a direction under subsection (2) or (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Examination of witnesses.

13. (1) The public prosecutor, or any person designated by the judicial officer holding an inquest to act in the public prosecutor's stead, may examine any witness giving evidence at the inquest.

(2) Any person who satisfies the judicial officer that he or she has a substantial interest in the issue of the inquest may, either personally or by counsel or attorney, examine any witness giving evidence at the inquest.

Adjournment of inquest and continuation by different judicial officer.

14. (1) An inquest may at any time be adjourned if the judicial officer holding the inquest considers it necessary or expedient.

(2) An inquest commenced by a judicial officer who, because of absence, death or incapacity, becomes unable to continue the inquest, may, subject to the provisions of section 7, be continued by any other judicial officer as if the inquest had been commenced by him or her, and he or she may cause any person who has already given evidence at the inquest to be recalled to give evidence.

Admissibility of statements and interrogatories.

15. (1) A document purporting to be a statement under oath or affirmation by a person in connection with any death or alleged death in respect of which an inquest is held, or a certified copy thereof, shall, if it is produced at the inquest, at the discretion of the judicial officer holding the inquest be admissible as proof of the facts stated therein.

(2) Notwithstanding the provisions of subsection (1), the judicial officer may admit any such statement even though it was not made under oath or affirmation, or a certified copy of such a statement, if, having regard to -

- (a) the form and contents of the document in which the statement is contained;
- (b) the availability of the person who made the statement;

- (c) the probative value of the statement;
- (d) any prejudice to any person which the admission of the statement might entail; and
- (e) any other circumstance which the judicial officer considers relevant,

he or she is of the opinion that such statement or certified copy, should be admitted in the interests of justice.

(3) The judicial officer may cause a person by whom a statement contemplated in subsection (1) or (2) was made to be subpoenaed to give oral evidence at the inquest or may cause written interrogatories to be submitted to such person for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquest.

(4) Any person who in any written statement under oath or affirmation contemplated in subsection (1) makes a false statement knowing it to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for the crime of perjury.

Copies of records of inquiries.

16. A document purporting to be a copy of the record of an inquiry referred to in section 26(1), and purporting to be certified as a true copy of such record by a person describing himself or herself as the holder of a public office, shall, if it is produced at an inquest held in respect of the death which was the subject of such inquiry, at the discretion of the judicial officer holding the inquest, be admissible in evidence at the inquest.

Taking evidence on commission.

17. (1) Whenever in the course of any inquest proceedings it appears to the judicial officer holding the inquest that the examination of a witness is necessary and that the attendance of such witness cannot be procured without such amount of delay, expense or inconvenience as would in the circumstances be unreasonable, the judicial officer may dispense with such attendance and issue a commission to any person to take the evidence of such witness, whether within Namibia or elsewhere, in regard to such matters or facts as the judicial officer may indicate, and thereupon the provisions of section 171 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply.

(2) Any person referred to in section 13(2) may appear before a person commissioned under subsection (1), either personally or by counsel or attorney, and examine the witness concerned.

(3) The evidence recorded on commission in terms of subsection (1) shall be admissible in evidence at the inquest.

Finding.

18. (1) If, in the case of an inquest where the body of the deceased person is alleged to have been destroyed or where no body has been found or recovered, the evidence proves beyond reasonable doubt that a death has occurred, the judicial officer holding the inquest shall record a finding accordingly, and thereupon the provisions of subsection (2) shall apply.

(2) At the close of an inquest the judicial officer holding the inquest shall record a finding as to -

- (a) the identity of the deceased person;
- (b) the cause or probable cause of death;
- (c) the date of death;
- (d) whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person.

(3) If the judicial officer is unable to record any finding mentioned in subsection (2), he or she shall record that fact.

Submission of record to
Prosecutor-General.

19. Upon the close of an inquest the judicial officer who held the inquest shall -

- (a) if he or she has in terms of subsection (3) of section 18 recorded the fact that he or she is unable to record any finding mentioned in subsection (2) of that section;
- (b) if he or she has in terms of section 18(2)(d) recorded a finding that the death was brought about by an act or omission *prima facie* involving or amounting to an offence on the part of any person; or

(c) if requested to do so by the Prosecutor-General,

cause the record of the proceedings to be submitted to the Prosecutor-General.

Re-opening of inquest.

20. (1) If the Prosecutor-General, at any time after the receipt of a record in terms of section 19, so requests, the judicial officer by whom the inquest was held or, in circumstances as contemplated in section 14(2), any other judicial officer, shall re-open the inquest.

(2) The Minister may at any time after the close of an inquest, and if the Minister considers it necessary in the interests of justice, request the Judge President of the High Court of Namibia to designate a judge of that Court to re-open such inquest, whereupon the judge so designated shall re-open the inquest in question.

(3) An inquest re-opened in terms of subsection (1) or (2) shall, subject to the provisions of this Act, be continued and disposed of by the judicial officer concerned on the existing record, and the judicial officer may when continuing the inquest -

- (a) cause any person to be subpoenaed for the taking of further evidence;
- (b) direct the district surgeon or any other medical practitioner to make an examination, or cause an examination to be made, of the body in question, or of any internal organ or part of such body, or of any of the contents thereof;
- (c) where necessary for the purposes of an examination referred to in paragraph (b), issue an order for the exhumation of the body in question.

(4) When a district surgeon or any other medical practitioner conducts an examination pursuant to a direction under paragraph (b) of subsection (3), he or she may do anything authorised by subsections (2) and (3) of section 4.

(5) At the close of a re-opened inquest the judicial officer shall -

- (a) either confirm the previous finding in terms of section 18 or, if he or she so decides, record a different finding in accordance with that section;
- (b) cause the record of the proceedings to be submitted to the Prosecutor-General.

Certain findings on review equivalent to order presuming death.

21. (1) Whenever at an inquest contemplated in subsection (1) of section 18 a regional magistrate or magistrate records a finding in regard to the matters mentioned in that subsection and in paragraphs (a) and (c) of subsection (2) of that section, such regional magistrate or magistrate shall submit the record of the inquest, together with any comment which he or she may wish to make, to the High Court of Namibia for review by that Court or a judge thereof.

(2) If such finding of the regional magistrate or magistrate is not set aside on review, such finding shall have the effect of an order of the High Court of Namibia presuming the death of the person concerned.

(3) Where a finding as contemplated in subsection (1) is recorded at an inquest by a judge of the High Court of Namibia, such finding shall have the effect of an order of the High Court of Namibia presuming the death of the person concerned.

(4) Nothing in this Act contained shall affect the right of any person to apply to the High Court of Namibia for an order presuming the death of any other person or the right of that Court or a judge thereof to grant any such order.

Inquest records.

22. The record of an inquest which has been submitted -

- (a) to the Prosecutor-General in terms of section 19 or 20, shall, if it is no longer required by the Prosecutor-General, be returned -
 - (i) in a case where the inquest was held by a judge of the High Court of Namibia or, in accordance with section 20(2), continued by such a judge, to the registrar of that Court; or
 - (ii) in any other case, to the magistrate of the district in which the inquest was held;

- (b) to the High Court of Namibia in terms of section 21, shall upon conclusion of the review proceedings, be returned to the magistrate of the district in which the inquest was held,

and such record shall form part of the records of the court to which it is so returned.

Offences.

23. (1) Any person who -

- (a) insults a judicial officer or assessor during the proceedings of an inquest, or a clerk or other officer of the court performing any function at the inquest;
- (b) wilfully interrupts the proceedings of the inquest;
- (c) creates a disturbance, or takes part in creating or continuing a disturbance, in or at the place where an inquest is being held,

shall, in addition to the judicial officer having him or her removed and detained until after the termination of the sitting, be liable to be sentenced summarily or upon summons to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Whenever a magistrate summarily commits or fines a person under subsection (1), the magistrate shall without delay transmit to the Registrar of the High Court of Namibia, for the consideration and review by a judge in chambers, a statement, certified to be true and correct, of the grounds and reasons for his or her proceedings.

(3) Any person who at an inquest gives false evidence knowing it to be false, or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for the crime of perjury.

(4) Any person who prejudices, influences or anticipates the proceedings or findings at an inquest shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Inquest not to prevent institution of criminal proceedings.

24. (1) Nothing in this Act contained shall be construed as preventing the institution of criminal proceedings against any person or as preventing any person authorized thereto from issuing a warrant for the arrest of or arresting any person in connection with any death, whether or not an inquest has commenced in respect of such death.

(2) Whenever it comes to the knowledge of the judicial officer who is holding or is to hold an inquest that criminal proceedings are being or to be instituted in connection with the death in respect of which the inquest proceedings have been or are to be commenced with, he or she shall stop or not commence with the inquest proceedings, as the case may be.

Regulations.

25. The Minister may make regulations prescribing forms to be used for the purposes of this Act and generally for the better carrying out of the objects and purposes of this Act.

Application of Act in relation to other laws.

26. (1) Nothing in this Act contained shall be construed as affecting the provisions of any other law providing for an inquiry into any occurrence attended with loss of human life.

(2) Any such inquiry may be held jointly with an inquest under this Act.

(3) Notwithstanding anything to the contrary contained in any such other law, the judicial officer shall preside at, and the provisions of this Act shall *mutatis mutandis* apply to, any such joint inquest and inquiry, but any report required to be made in terms of such other law shall be so made.

Repeal of laws and savings.

27. (1) Subject to the provisions of subsections (2) and (3), the laws referred to in the Schedule are hereby repealed.

(2) Anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.

(3) Any inquest commenced with before the date of commencement of this Act under a law repealed by subsection (1) and which has not been completed on the said date of commencement shall be proceeded with as if this Act had not been passed.

Short title and commencement.

28. This Act shall be called the Inquests Act, 1993 and shall come into operation on such day as the Minister may appoint by notice in the *Gazette*.

SCHEDULE

Laws repealed

No. and year of law	Title	Extent of repeal
Act 58 of 1959	Inquests Act, 1959	The whole
Act 29 of 1974	General Law Amendment Act, 1974	The whole
Act 46 of 1977	Inquests Amendment Act, 1977	The whole
Act 65 of 1979	Inquests Amendment Act, 1979	The whole
Act 12 of 1985	Inquests Amendment Act, 1985	The whole