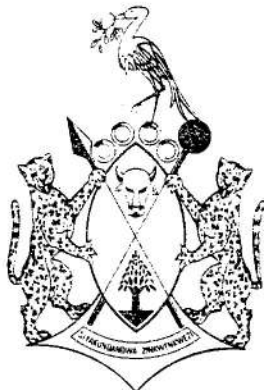


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**REPUBLIC OF
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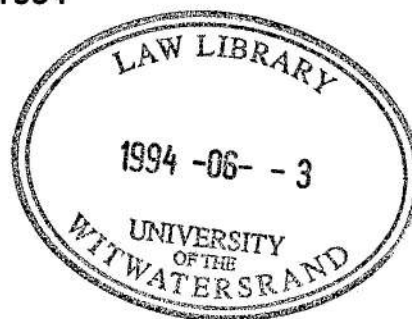
No. 31

DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 16 OF 1994

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

**INQUESTS AMENDMENT DECREE, 1994
Decree No. 10 of 1994**



COUNCIL OF STATE — REPUBLIC OF CISKEI

INQUESTS AMENDMENT DECREE, 1994

DECREE

To amend the Inquests Act, 1984.

[English text signed by the Chairman of the Council of State. Assented to on 14 March 1994.]

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Amendment of section 3 of Act 29 of 1984, as amended by section 3 of Decree 3 of 1991. - Section 3 of the Inquests Act, 1984 (hereinafter referred to as the principal Act) is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of any other law providing for an enquiry into the circumstances of any death, any police official who has reason to believe that a person has died from other than natural causes shall -

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

(b) report the death or alleged death or cause it to be reported to the magistrate of the district concerned or to a person designated by the magistrate.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) If the body of the person who has allegedly died from other than natural causes is available, it shall be examined by the district surgeon or other like medical practitioner who may, if he deems it necessary for the purpose of ascertaining with greater certainty the cause of death, make or cause to be made an examination of any internal organ or any part or any of the contents of the body or of any other substance or thing.”.

2. Substitution of section 5 of Act 29 of 1984, as amended by section 4 of Decree 3 of 1991. - The following section is hereby substituted for section 5 of the principal Act:

“5. When inquest to be held. - (1) If criminal proceedings are not instituted in connection with the death or alleged death, the public prosecutor shall submit the statements, documents and information mentioned in section 4 to the magistrate of the district concerned.

(2) If on the information submitted to him in terms of subsection (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes, he shall, subject to the directions of the Minister, take such steps as may be necessary to ensure that an inquest as to the circumstances and cause of the death is held by a judicial officer in terms of section 6: Provided that no inquest in respect of which it is alleged that either the death or the incident has occurred outside Ciskei shall be held unless the Minister or any person authorized thereto by him so directs.

(3) If an inquest has to be held by a judicial officer other than the magistrate to whom the statements, documents and information concerned were submitted, such magistrate shall transmit them to the judicial officer who is to hold such inquest as to the circumstances and cause of the death.”.

3. Substitution of section 6 of Act 29 of 1984, as amended by section 1 of Act 20 of 1988 and section 5 of Decree 3 of 1991. - The following section is hereby substituted for section 6 of the principal Act:

“6. Judicial officer who is to hold inquest. - An inquest shall be held -

(a) subject to the provisions of paragraphs (c) and (d), by the magistrate of the district in which the incident is alleged to have occurred; or

INQUESTS AMENDMENT DECREE, 1994

(b) subject to the provisions of paragraphs (c) and (d), where it is alleged that the death has not occurred on land, by the magistrate of the district where the body has been brought ashore or to land or has been found, as the case may be; or

(c) where the Minister or any person authorized thereto by him deems it expedient or where it is uncertain whether a death has occurred in or outside Ciskei, by any regional magistrate or magistrate designated by the Minister or person so authorized at a place so designated; or

(d) where the Minister has so requested, by a judge of the Supreme Court designated by the Chief Justice, in which event the inquest may be held at any place from time to time determined by such judge."

4. Amendment of section 8 of Act 29 of 1984, as substituted by section 7 of Decree 3 of 1991. - Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The judicial officer who is to hold or holds an inquest may, of his own accord or at the request of any person who has a substantial and peculiar interest in the outcome of the inquest, cause to be subpoenaed any person to give evidence or to produce any document or thing at the inquest: Provided that the said judicial officer shall, if so requested by the attorney-general, cause persons or any particular person to be subpoenaed to give oral evidence at the inquest, either in general or in respect of any particular matter."

5. Amendment of section 9 of Act 29 of 1984, as amended by section 8 of Decree 3 of 1991. - Section 9 of the principal Act is hereby amended by the addition to subsection (3) of the following proviso:

"Provided that, if an assessor dies or is for any reason unable to act as assessor at any time during an inquest, the judicial officer may -

- (i) direct that the inquest proceed without the said assessor; or
- (ii) summon any person to his assistance in the place of the said 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 as if he had not previously so given evidence."

6. Substitution of section 10 of Act 29 of 1984, as amended by section 12 of Decree 3 of 1991. - The following section is hereby substituted for section 10 of the principal Act:

"10. When inquest to be held in public. - (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 is holding an inquest that it would be in the interests of the safety of any witness or of good order or of the administration of justice -

- (a) that the inquest be held behind closed doors, or
- (b) that any particular person should not be present,

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

(3) If it appears to the judicial officer who is holding an inquest that the safety of any person may be endangered if he testifies at the inquest, that judicial officer may direct that the identity of that person shall not be revealed or that it shall not be revealed for such period or except on such conditions as that judicial officer may determine.

(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."

INQUESTS AMENDMENT DECREE, 1994

7. Substitution of section 13 of Act 29 of 1984, as amended by section 2 of Act 20 of 1988 and section 12 of Decree 3 of 1991. - The following section is hereby substituted for section 13 of the principal Act:

"13. Admissibility of declarations and interrogations. - (1) Upon production by any person any 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 being held, or any certified copy thereof, shall at the discretion of the judicial officer holding the inquest be admissible in proof of the facts stated therein: Provided that the said judicial officer may admit any statement which is not so admissible or a certified copy thereof if that judicial officer, having regard -

(a) to the form and content of the document in which any such statement is contained,

(b) to the availability of the person who made any such statement,

(c) to the probative value of any such statement,

(d) to any prejudice to any person which the admission of any such statement might entail, and

(e) to any other circumstance which should in the opinion of that judicial officer be taken into account,

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

(2) The judicial officer may at his discretion cause the person who made such statement to be subpoenaed to give oral evidence at the inquest or may cause written interrogatories to be submitted to him 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.

(3) Any person, who in any statement in writing under oath or affirmation contemplated in this section makes a false statement knowing it to be false or without reasonable grounds (the onus of proof of which shall be on him) for 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 perjury.

(4) Any affidavit, record or other document of whatever nature, which would otherwise be admissible in evidence under this Act, shall be so admissible notwithstanding its execution, certification, preparation or attestation outside Ciskei or the fact that it has not been authenticated."

8. Amendment of section 16 of Act 29 of 1984, as amended by section 12 of Decree 3 of 1991. - Section 16 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph:

"(d) as to 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."

9. Amendment of section 17 of Act 29 of 1984, as amended by section 12 of Decree 3 of 1991. - Section 17 of the principal Act is hereby amended -

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) if he has in terms of section 16(2)(d) recorded a finding upon the inquest that the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person; or"; and

(b) by the addition of the following subsection:

"(3)(a) The provisions of section 16 shall *mutatis mutandis* apply in respect of any inquest re-opened in terms of subsection (2).

(b) The judicial officer who held such inquest shall cause the record of the proceedings to be submitted to the attorney-general."

INQUESTS AMENDMENT DECREE, 1994

10. Insertion of section 17A in Act 29 of 1984. - The following section is hereby inserted in the principal Act after section 17:

"17A. Re-opening of inquest. - The Minister may, on the recommendation of the attorney-general at any time after the determination of an inquest and if he deems it necessary in the interests of justice, request the Chief Justice to designate any judge of the Supreme Court to re-open that inquest and the judge so designated shall re-open that inquest.

(2) The inquest referred to in subsection (1) shall subject to the provisions of this Act and in so far as it is practicable be continued and disposed of by the judge so designated on the existing record of the proceedings and the provisions of section 17(2) shall, to the extent to which they are not contrary to the provisions of this section, apply *mutatis mutandis* to the inquest.

(3) A judge holding an inquest that has been re-opened in terms of this section -

(a) may cause any person who has already given evidence at the inquest to be subpoenaed to give further evidence;

(b) shall record any finding that differs from a finding referred to in section 16(2), as well as the respect in which it differs; and

(c) shall cause the record of the proceedings to be submitted to the attorney-general.

(4) The provisions of this section shall apply in respect of any inquest, irrespective of when it was determined.

11. Amendment of law. - The law mentioned in the Schedule is hereby amended as indicated therein.

12. Short title. - This decree shall be called the Inquests Amendment Decree, 1994.

SCHEDULE

Amendment of Act 23 of 1979

1. Section 1 of the Dissolution of Marriages on Presumption of Death Act, 1979 is hereby amended by the substitution for the words "provincial or local division of the Supreme Court of South Africa" of the words "court of the general division of the Supreme Court".

2. The following section is hereby substituted for section 2 of the Dissolution of Marriages on Presumption of Death Act, 1979:

"2. Effect of certain findings on marriages. - Whenever an inquest has been held in accordance with the provisions of the Inquests Act, 1984 (Act 29 of 1984) in respect of the death of any married person and any finding in respect of that death has the same effect in terms of section 18(2) or (2A) of that Act as if it were an order granted by the reviewing court or judge or by the general division of the Supreme Court that the death of the person concerned shall be presumed in accordance with such finding, the marriage in question shall for all purposes be deemed to have been dissolved by death as from the date of death of the said person as recorded in terms of section 16(2)(c) of that Act in that finding."

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