

**CHAPTER 07:01  
INQUESTS**

ARRANGEMENT OF SECTIONS

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Proc. 38, 1954,  
Proc. 51, 1956,  
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Cap. 34, 1959,  
Law 39, 1962,  
HMC Order 1, 1963,  
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S.I. 36, 1975,  
S.I. 10, 1976,  
Act 14, 2005,  
Act 18, 2006.

**An Act to consolidate and amend the law relating to the holding of inquests and matters ancillary thereto.**

*[Date of Commencement: 3rd September, 1954]*

- 1. Short title**  
This Act may be cited as the Inquests Act.
- 2. Interpretation**  
In this Act, unless the context otherwise requires-

**"magistrate"** means any person appointed as Magistrate Grade I or over in accordance with the Magistrates' Courts Act;

**"medical practitioner"** means any person registered or entitled to be registered or to practise as a medical practitioner in Botswana in terms of the Botswana Health Professions Act;

**"presiding officer"** means any magistrate holding or about to hold an inquest in terms of this Act;

**"Registrar"** means the Registrar of the High Court;

**"State Counsel"** means any professional assistant appointed to assist the Director of Public Prosecutions.

### **3. Duty to notify death**

(1) It shall be the duty of every person-

- (a) who finds the dead body of a person who appears to have come by his death otherwise than from natural causes,
- (b) to whom the knowledge of any such death may come; or
- (c) to whom any such death is reported,

to notify as soon as possible the finding, knowledge or report, together with any other facts in connection therewith which are known to him, to an administrative officer, or to the person in charge of the nearest police station or police post, or to the nearest Chief or Sub-Chief.

(2) Any person who fails to comply with or contravenes any provision of this section shall be guilty of an offence and shall be liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

### **4. Duty of Chief or Sub-Chief to report**

(1) It shall be the duty of every Chief or Sub-Chief who receives a report under section 3(1) to transmit such report forthwith to an administrative officer, or to the person in charge of the nearest police station or police post, together with any other facts in connection therewith which are known to him.

(2) Any Chief or Sub-Chief who fails to comply with or contravenes any provision of this section shall be guilty of an offence, and liable to a fine not exceeding P220 or to imprisonment for a term not exceeding 12 months, or to both.

### **5. Duty of police officers**

It shall be the duty of any police officer on receiving a report in terms of section 3(1) or 4(1) or in any other manner becoming aware of the death of any person who appears to have come by his death other than from natural causes, to report forthwith to a superior police officer of the rank of sergeant or upwards:

Provided that if such officer holds the rank of sergeant or upwards or if undue delay is likely to be caused by the submission of a report, such officer may take action as required in section 6.

### **6. Method of investigation**

(1) It shall be the duty of any police officer of the rank of sergeant or upwards acting on a report received to proceed himself, or cause another police officer to proceed to the place where the body is lying and to make a full investigation into the circumstances surrounding the death of the deceased and the probable cause thereof.

(2) In the course of his investigation the police officer-

- (a) shall take statements from any person who in his opinion may be able to give relevant information as to the cause of or circumstances surrounding the death;
- (b) shall make a report on the apparent cause of death, describing such wounds, fractures, bruises or other marks of injury as may be found on the body, and stating in what manner or by what weapon or instrument (if any) such marks appear to have been inflicted; and shall attach to such report any statements taken in pursuance of paragraph (a);
- (c) shall transmit such report together with any statements and any other information

- which may be relevant to his superior officer; and
- (d) may give authority for the body to be buried, or may cause the body to be forwarded to the nearest convenient place for such medical examination as may be directed in terms of section 7(e).

(3) On receipt of a report in terms of subsection 2(c), such superior officer may require any statement to be made in the form of an affidavit; and shall forward the report, statements and affidavits (if any) to an administrative officer.

#### **7. Duty of administrative officer**

It shall be the duty of an administrative officer-

- (a) who receives a report in terms of section 3 or 4 to ascertain whether a report has been made to the police, and, if no such report appears to have been made, to cause it to be made forthwith;
- (b) who receives a report in terms of section 6(3) that the death is due to natural causes, or suicide, or accident, and that the body shows no appearance of death being attributable to or having been accelerated by violence or by any culpable or negligent conduct on the part of any person, and who is satisfied with such conclusion, to issue a certificate to that effect and to forward the report, other relevant documents and the certificate to the Registrar;
- (c) who is satisfied that reasonable grounds exist for suspecting that the death was caused by the criminal act or culpable or negligent conduct of some known person or persons, to refer the matter to the public prosecutor who, subject to the provisions of section 13(3) of the Criminal Procedure and Evidence Act shall take such action thereon as he shall deem fit;
- (d) who is not satisfied that the death is due to natural causes, or suicide or accident or is of the opinion that there is reasonable suspicion that death is attributable to or has been accelerated by violence or by any culpable or negligent conduct on the part of any unknown person or persons to direct that an inquest shall be held as soon as practicable;
- (e) to direct an examination of the body by a medical practitioner, if he considers such examination necessary;
- (f) notwithstanding anything contained in this section, where a person dies (otherwise than in lawful execution of sentence of death) while detained in any prison or reformatory or while in the custody of the police, to direct that an inquest into such death shall be held as soon as practicable; and for this purpose it shall be the duty of the person having charge of the police in the district in which such death occurred forthwith to report the same to an administrative officer.

#### **8. Power to order exhumation**

Whenever it appears to any administrative officer that the body of any person who has died in circumstances requiring the holding of an inquest thereon has been buried without examination by a medical practitioner, or whenever it appears to him that further medical examination is necessary, it shall be lawful for such administrative officer to order the exhumation of the body for examination or further examination:

Provided that such exhumation shall not be ordered in any case where in the opinion of the medical practitioner it would be injurious to public health or there is no reasonable probability of a satisfactory result being obtained thereby.

#### **9. Medical practitioner may dissect body**

Any medical practitioner who is required to examine any body in terms of this Act may make such dissection of the body as he may think necessary, and may make or cause to be made an examination of any of the internal organs of the body.

#### **10. Offence to obstruct investigation or examination**

Any person who prevents, obstructs or interferes with an administrative officer, a Chief

or Sub-Chief, a medical practitioner or a police officer in carrying out his powers and duties under this Act shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

#### **11. Venue of inquests**

(1) When any administrative officer has in terms of section 7(d) or (f) directed that an inquest be held, such inquest may be held by any magistrate having jurisdiction in the district in which the body was found or in the district in which any injuries or wounds are alleged to have been inflicted and such inquest may be adjourned by the presiding officer at any stage for further hearing in any other district.

(2) For the purpose of holding such inquest the presiding officer may avail himself of the services of such officers of a magistrate's court as he may deem necessary.

#### **12. Power to subpoena witnesses**

(1) The presiding officer may subpoena witnesses to give evidence or to produce any document or thing at such inquest.

(2) The process for subpoenaing witnesses to attend before any inquest held under this Act shall be issued by the officer prescribed by the rules relating to magistrates' courts.

(3) If any person so subpoenaed as a witness fails to attend or to produce any document or any other thing pursuant to the subpoena he shall, if he is unable to give a reasonable excuse for the default, be guilty of an offence and liable to a fine not exceeding P50 or to imprisonment for a term not exceeding one month, or to both.

#### **13. Evidence to be taken on oath or by affidavit**

(1) Except as is provided in this section, the evidence of a witness at an inquest shall be upon oath administered by the presiding officer in the form which most clearly conveys to him the meaning of the oath, and which he considers to be binding on his conscience.

(2) In any case where any person objects to taking an oath, it shall be lawful for such person to make an affirmation in the form prescribed in criminal proceedings in the courts of Botswana.

(3) If any person has made a statement or affidavit in terms of this Act, and, in the opinion of the presiding officer, the attendance of such to give *viva voce* evidence at an inquest would cause unnecessary expense or delay, or cause unnecessary hardship or inconvenience to such person, the presiding officer may admit such statement or affidavit in evidence at the inquest upon the production thereof by the police officer in charge of the investigation:

Provided that nothing contained in this subsection shall debar a presiding officer who has admitted such statement or affidavit in evidence from thereafter subpoenaing the deponent to give *viva voce* evidence, if he considers it necessary for the purpose of ascertaining the cause of or criminal responsibility for the death.

#### **14. Rules of evidence not to apply**

The presiding officer shall not be bound by any rules of evidence which may pertain to civil or criminal proceedings, but if any witness objects to answer any question on the ground that it will tend to incriminate him, he shall not be required to answer the question nor be liable to any penalty for refusing to answer.

#### **15. Penalty for refusing to answer questions**

Except as provided in section 14, any person lawfully required by the presiding officer to give evidence, who refuses to be sworn or, having been sworn, refuses to answer such questions as are put to him, shall be liable to the penalties prescribed in section 202(1) of the Criminal Procedure and Evidence Act.

#### **16. False evidence**

Any person who-

- (a) after an oath has been administered to him or after affirming, under this Act, gives false evidence knowing it to be false; or
- (b) in an affidavit made for the purposes of this Act makes a false statement knowing it to

be false,  
shall be guilty of an offence and liable to the penalties prescribed by law for the crime of perjury.

**17. Evidence: how recorded**

The evidence of every witness shall be taken down and recorded in the form of a deposition in the manner prescribed for preparatory examinations by the Criminal Procedure and Evidence Act.

**18. Duty of presiding officer where crime disclosed**

If before or at the termination of an inquest the presiding officer is of opinion that the death of the deceased was caused by an act or omission which amounts to a criminal offence by some known person or persons he shall cause such person or persons to be arrested or summoned, or take such other steps as may be necessary, in order that criminal proceedings may be instituted; and in all such cases he shall forthwith terminate the inquest and record what action has been taken.

**19. Transmission of record to Registrar**

At the conclusion of an inquest otherwise than in pursuance of section 18, the presiding officer shall record his opinion as to the cause of death, and any other matters relevant thereto, and forthwith transmit the original record to the Registrar.

**20. Duty of Registrar** On receipt of a report and certificate in pursuance of section 7(b), or of a record in pursuance of section 19, the Registrar shall transmit the report and certificate, or the copy of the record (as the case may be) to the Director of Public Prosecutions.

**21. Powers of Director of Public Prosecutions** (1) The Director of Public Prosecutions may-

- (a) upon receipt of a report and certificate direct that an inquest be held;
- (b) direct that an inquest be re-opened to take further evidence generally or in respect of any particular matter;
- (c) cause an examination or further examination of a dead body to be made, and, if necessary, cause such body to be disinterred for the purpose of the examination;
- (d) direct that no further action be taken; or
- (e) take such measures and give such directions as he may deem most expedient in the interests of justice.

(2) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by subsection (1) be vested for the time being in a State Counsel, and the exercise of these powers by a State Counsel shall then operate as if they had been exercised by the Director of Public Prosecutions:

Provided that the Director of Public Prosecutions may in writing vary any order made by a State Counsel in terms of this subsection.

**22. Witness fees and expenses**

Every witness subpoenaed or appearing to give evidence at any inquest shall be entitled to receive such fees and expenses as he would be entitled to receive if he was a witness subpoenaed to give evidence at a criminal trial before a magistrate's court where the inquest is being held.

**23. Mine accidents** (1) Notwithstanding anything contained in this Act, any inquiry held in accordance with any written law relating thereto into an accident occurring at or upon any mine or works and causing death, shall be sufficient examination for the purpose of this Act, unless the Director of Public Prosecutions or a duly authorized State Counsel otherwise directs.

(2) Every inspector or other person holding such an inquiry shall transmit to the Director of Public Prosecutions as soon as may be the records of the inquiry and his report thereon, and shall in every case append thereto a statement of opinion whether or not the death was due to an act or omission of a criminal nature or in contravention of any written law on the part of any person, and, if so, on whose part.

**24. Penalty where body is buried without authority and alternative verdicts**

(1) Any person who, without lawful authority or excuse, buries, cremates or otherwise disposes of the body of any person when there is reasonable cause to suspect that such person has died a violent or an unnatural death or as a result of some criminal act, or has died a sudden death of which the cause is unknown or causes or permits such body to be buried, cremated or otherwise disposed of shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding two years, or to both.

(2) When any person is charged with having committed or is liable to be convicted of an offence under this section the onus of proving that he had lawful authority or excuse shall be on such person.

(3) Any person charged with murder or culpable homicide in regard to whom it is not proved that he caused the death of the person whom he is charged with killing or that he was an accessory to such killing, may, if it is proved that he is guilty of an offence under this section or under section 4 be found guilty of and sentenced for such offence.

**25. Saving of power of arrest**

Nothing contained in this Act shall be construed as preventing any person authorized by law to issue warrants to arrest, or authorized to arrest offenders or supposed offenders, from acting in all respects as regards such warrants or such offenders (whether an inquest has or has not commenced) precisely as if this Act had not been passed.

**26. Non-commissioned officer may administer oaths**

Notwithstanding anything to the contrary contained in any written law relating to Justices of the Peace or Commissioners of Oaths, or any other law, any police officer of the rank of Sergeant and upwards is hereby empowered to administer an oath in respect of any affidavit required for the purposes of this Act.

**27. President may prescribe fees for medical practitioners**

The President may, by statutory instrument, make regulations prescribing the fees to be paid to medical practitioners not in the service of the Government who perform services for the purposes of this Act.