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BELL, DEWAR & HALL

SOME LEGAL ASPECTS OF THE AGGETT INQUEST

1. Introductory

This memorandum represents a first effort to put down on paper some of the legal questions which will be canvassed in the Aggett inquest. It is framed, at this stage, largely for the benefit of Dr West who will have insufficient knowledge of the general South African legal background. It is hoped that, however, it will form the basis of arguments which will be presented at various stages in the course of preparation and in the course of the inquest itself.

2. General approach of South African law

(a) Sovereignty of Parliament. Otherwise than in countries like the United States where there are written constitutions, Parliament in South Africa is supreme and the courts cannot, save with minor exceptions, question the validity of Acts of Parliament. Thus it is that in the Terrorism Act, No 83 of 1967, certain measures have been enacted which would be regarded as unconstitutional in the United States and in the several States which make up that great union. However harsh and unjust that Act may be, it will not be permissible to question the legal validity of its provisions in the inquest proceedings.

(b) The South African common law. Although the South African common law is Roman Dutch, and not English, in origin, it recognises the freedom of the individual to the same extent as the English common law and the common law of the United States. Therefore, in construing statutes, while effect must be given to the intention of the Legislature, the Legislature is presumed to have intended the minimum intrusion on the freedom of the individual.

And, where the Legislature has conferred powers upon a Minister or upon an official, such as the Commissioner of Police, the court may so interpret the powers that they must be exercised reasonably and to infringe the freedom of the individual as little as possible. (These are very general statements. Unfortunately, there is a tendency, on the part of the courts, where the security of the State is in issue, to adopt interpretations which liberals may regard as contrary to history and tradition of the Roman Dutch Law.)

(c) Provisions relating to detention for interrogation. There are a number of provisions under which the police are entitled to detain people. The various sections have been tightened up over the years and some of the cases to which reference will be made later were decided

under earlier provisions which have been replaced by those now under consideration. The particular provision which we must consider in the present context is section 6 of the Terrorism Act, No 83 of 1967, a copy of which is attached to this memorandum. It will be seen that:

> Sub-section (1). The detainee may be held
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> > "for interrogation at such place in the Republic and subject to such conditions as the Commissioner (of Police) may, subject to the directions of the Minister, from time to time determine, until the Commissioner orders his release when satisfied that he has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention ...".
>
> The conditions of detention are set out in a warrant, a copy of which will be attached to these papers. It will be noted that the conditions are very few but that they do contain a requirement that the detainee be allowed exercise.
>
> There is no explanation in the warrant, or elsewhere, as to how the interrogation is to be conducted. This means that there is no entitlement on the part of the police for the

interrogation to be conducted in a harsh or inhuman manner.

Likewise, there is nothing in the warrant which entitles the police to detain the detainee under inhuman conditions, save to the extent that access to him is expressly limited.

Sub-section (5) provides that the courts may not interfere in connection with the validity of any action taken under the section. This, it is submitted, does not exclude the jurisdiction of the court in circumstances where detention is under inhuman circumstances.

Sub-section (6). Here we have the provision limiting access to detainees which is generally regarded as a provision authorising solitary confinement. But there is room for the view that, notwithstanding the fact that access to the detainee is limited, the limitation cannot be imposed so as to impair the health of the detainee or to exonerate the police from their obligations to safeguard the health of the detainee.

3. Roussouw v Sachs 1964(2) SALR 551

This was a case where a detainee who was held

under the provisions of section 17 of Act No 37 of 1963 applied to court in Cape Town for certain relief against the Second in Command of the Security Branch of the South African Police in Cape Town. The matter then went on appeal to the Appellate Division and the judgment was delivered by Ogilivie Thompson JA, subsequently Chief Justice of the Republic of South Africa. The judgment appealed against was one of the court in Cape Town holding that the detainee was entitled to be afforded reasonable periods of daily exercise to be complied with and to be permitted to receive and use a reasonable supply of reading matter and writing material.

At page 561, the judge said:

> "Vital enquiries, however, remain:
>
> (i) did Parliament, in authorising such detention, intend (as, in effect, held by the Provincial Division) that the detainee should continue to enjoy all his ordinary rights and privileges, saving only such as are necessarily impaired either by the very fact of the detention itself or by the other express provisions of the section?; or
>
> (ii) did Parliament intend that, in furtherance of the object of inducing the detainee to speak, the continued detention should be as effective as possible, subject only to considerations of humanity as generally accepted in a civilised country?"

The court went on to say:

> "It may readily be postulated that Parliament can never have intended that the detainee should, in order to induce him to speak, be subjected to any form of assault, or that his health or resistance should be impaired by inadequate food, living conditions or the like. Equally, the interrogation expressly authorised by section 17 cannot, in my judgment, be construed as in any way sanctioning what are commonly described as third degere methods. Readily conceding all this, as also an obligation on the part of the State to see that the detainee is, at the end of his detention, released with his physical and mental health unimpaired, counsel for the appellant argued that, during the period of his detention, a detainee is entitled to necessities but not to comforts. Reading matter and writing materials, so the argument continued, fall into the latter category unless, in a particular case, such matter or materials are shown to be necessary for the preparation of a detainee's defence or, upon medical grounds, necessary for the maintenance of his health."

The conclusion of the judgment appears at the foot of 564:

> "As made clear earlier in this judgment, the State's obligation to maintain the detainee during his detention in good health, both in body and in mind, is accepted by appellant's counsel. Having given the matter the best consideration I can, I am inclined to think that - vague though the distinction may in certain respects be - appellant's counsel is correct in distinguishing between necessities and ccmforts, and in his submission that the detainee is entitled to the former as a matter of right but to the latter only as a matter of grace. I am very conscious of the fact that, for detainees who may broadly be classified as intellectuals, the deprivation of reading matter or writing materials during

> their detention may approximate to the application of a form of that very 'psychological compulsion' so emphatically repudiated by counsel for the appellant. But, after meticulous scrutiny of the language of section 17 in the light of the circumstances whereunder it was enacted and of the general policy and object of the section, I have come to the conclusion that it was not the intention of Parliament that detainees should as of right be permitted to relieve the tedium of their detention with reading matter or writing materials."

4. State v Christie 1982(1) SALR 464

This case does not help us very much, but it is the latest judgment of the Appellate Division of the Supreme Court dealing with the powers of detention under section 6 of the Terrorism Act. It, like so many other cases dealing with the section, discusses these provisions in connection with a decision as to whether or not a statement made while under detention is admissible as evidence in the trial of the person detained. This is not the question which arises in the present instance.

Reference must, however, be made to the judgment of Mr Justice Diemont at 484 where he says, comparing the Terrorism Act provisions with those of section 22 of Act 62 of 1976. The judge says:

> "The distinction between the two sections must not be overlooked. Section 6 of the Terrorism Act permits indefinite confinement with a considerable degree of isolation until the detainee has replied satisfactorily to all questions; these factors, it has been said, could create conditions calculated to

put the detainee under pressure to make statements regardless of their truth or falsity ..., whereas section 22 provides for only limited detention and does not create an obligation to speak. Section 6 is obviously the more drastic section and the likelihood of the detainee being influenced by the circumstances of his detention is far greater when he is arrested and detained under the provisions of the Terrorism Act."

5. Minister of Police v Ewels 1975(3) SALR 590

This is a landmark decision of the Appellate Division in regard to the liability for acts of omission. The judgment is summarised in the headnote to the report:

"Our law has developed to the stage wherein an omission is regarded as unlawful conduct when the circumstances of the case are of such a nature that the omission not only incites moral indignation but also that the legal convictions of the community demand that the omission ought to be regarded as unlawful and that the damage suffered ought to be made good by the person who neglected to do a positive act. In order to determine whether there is unlawfulness the question, in a given case of an omission, is thus not whether there was the usual 'negligence' of the bonus paterfamilias but whether, regard being had to all the facts, there was a duty in law to act reasonably.

Where the respondent, an ordinary citizen, had been assaulted by a sergeant of police, who was not on duty, in a police station under the control of the police and in the presence of several members of the police from who it was jointly reasonably possible, even easily, to have prevented or to have put an end to the attack.

Held, that the duty which rested on the policemen to have come to the assistance of

> the respondent was a legal duty and as it was a failure which had taken place in the course of the policemen's duty that the appellant was liable for the damages claimed by the respondent."

6. The law of culpable homicide

If it is to be established, in the course of the inquest, that death was brought about by an act or omission involving or amounting to an offence on the part of any person, that offence will, almost certainly, have to be culpable homicide. This offence is described in our leading book on criminal law as follows:

> "Culpable homicide consists in the unlawful killing of another person either negligently or intentionally but in circumstances of partial excuse."

On the question of negligence, the author states that the State must prove:

> "Firstly, that a reasonable man in X's position would have foreseen the possibility that his conduct might cause death of Y or a person in Y's position; secondly, that a reasonable man would have guarded against that possibility; and thirdly, that X failed to take reasonable steps to guard against it. This is often expressed by saying that X must have owed to Y a 'duty of care' and breached that duty, but objections have been raised to the phrase, which is certainly not indispensable: it adds nothing of substance to the criteria of negligence already formulated."

The author goes on to say that it has been laid down by the Appellate Division on several occasions that

> "The test of negligence to be applied in criminal trials is the same as that applied in civil cases."

In other words, the rule in the case of Ewels referred to above would also apply in the present instance.

The mere fact that the act of accused was unlawful does not mean that culpable homicide was committed. The leading case on this subject is the State v Van der Mescht. In that case the accused had been convicted of culpable homicide because, in the process of smelting gold unlawfully at his home, he had gassed his children with the noxious fumes. The Appellate Division held that culpable homicide had not been committed because it had not been proved that, in the course of the unlawful smelting of the gold, Van der Mescht foresaw that his actions might cause the death of his children.

A further remark by the learned author is:

> "It can be taken as settled that it is essential that the possibility of death - not just some injury, nor even serious injury - must have been reasonably foreseeable. Of course since, as Holmes JA said in the case of Bernardus, serious injury and death 'are sombrely familiar as cause and effect in the walks of human experience', it will usually follow that where the possibility of serious injury is reasonably foreseeable, the

possibility of death is also reasonably foreseeable. But this is a matter for inference in the light of the particular facts of each case.

"On the other hand it is important to note that it is 'the general possibility of death which must reasonably be foreseeable, and not the specific manner and nature thereof. The facets of vulnerability of the human body are legion, and the death may come to mortals through a variety of corporeal hurts and derangements'. If a hunter ought reasonably to foresee that his bullet may miss his target and kill Y whose hut is behind it, it does not matter that Y actually dies from a slight flesh wound because he is a haemophiliac.

"It is not necessary that it should be reasonably foreseeable that X's conduct alone may cause Y's death. A reasonably foreseeable novus actus interveniens will not absolve X from liability (provided it is one he should have guarded against). For instance in R v Moketse, X put down a loaded shotgun within reach of a child who picked it up and shot another child. It was held that the child's intervention should itself have been foreseen and guarded against."

"Did the accused in fact fail to take reasonable steps to guard against the foreseeable harm?

Having ascertained that a reasonable man would have foreseen the possibility of Y's death and guarded against it, the next enquiry is whether X took the steps which a reasonable man would have taken to guard against it. In this regard it must be stressed that the slightest deviation from the norm of the reasonable man suffices. Unlike English law, a serious deviation is not required, for gross negligence is not essential.

"The test is an objective one which eliminates the personal equation and is independent of the idiosyncrasies of the

accused, whose physical, intellectual and educational deficiencies are disregarded if he falls short of the ideal. However, where X possesses knowledge or skill superior to that of the reasonable man, he is judged subjectively in the light of his superior knowledge and skill."

W LANE
BELL DEWAR & HALL
23 February 1982

INQUESTS ACT
NO. 58 OF 1959

[ASSENTED TO 27 JUNE, 1959] [DATE OF COMMENCEMENT: 1 JANUARY, 1960]

(*Afrikaans text signed by the Governor-General*)

as amended by

General Law Amendment Act, No. 29 of 1974
[with effect from 15 March, 1974—see title GENERAL LAW AMENDMENT ACTS]
Inquests Amendment Act, No. 46 of 1977
Inquests Amendment Act, No. 65 of 1979

ACT

To provide for the holding of inquests in cases of deaths or alleged deaths apparently occurring from other than natural causes and for matters incidental thereto, and to repeal the Fire Inquests Act, 1883 (Cape of Good Hope) and the Fire Inquests Law, 1884 (Natal).

1. Definitions.—In this Act, unless the context otherwise indicates—

"magistrate" includes an additional magistrate and an assistant magistrate and, in relation to the area in the territory of South-West Africa beyond the Police Zone, as defined in section *three* of the Prohibited Areas Proclamation, 1928 (Proclamation No. 26 of 1928), of the said territory, a Commissioner, an Assistant Commissioner and an officer in charge of Black affairs;

"Minister" means the Minister of Justice;

"policeman" includes any member of a force established under any law for the carrying out of police powers, duties and functions;

"public prosecutor" means a public prosecutor attached to the magistrate's court of the district wherein an inquest is held or to be held under this Act;

"this Act" includes any regulation made thereunder.

2. Duty to report deaths.—(1) Any person who has reason to believe that any other person has died and that death was due to other than natural causes, shall as soon as possible report accordingly to a policeman, unless he has reason to believe that a report has been or will be made by any other person.

(2) Any person who contravenes or fails to comply with the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds.

3. Investigation of circumstances of certain deaths.—(1) Subject to the provisions of any other law providing for an investigation of the circumstances of any death, any policeman who has reason to believe that any person has died and that such person has died from other than natural causes, shall investigate or cause to be investigated the circumstances of the death or alleged death.

(2) If the body of such person is available, any magistrate to whom the death is reported shall, if he deems it expedient in the interests of justice, cause it to be examined by the district surgeon or any other 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.

(3) For the purposes of any examination mentioned in sub-section (2)—

(*a*) any part or internal organ or any of the contents of a body may be removed therefrom;

(*b*) a body or any part, internal organ or any of the contents of a body so removed therefrom may be removed to any place.

(4) A body which has already been interred may, with the written permission of the magistrate or the attorney-general within whose area of jurisdiction it has been interred, be disinterred for the purpose of any examination mentioned in sub-section (2).

(5) At any examination conducted by a medical practitioner in terms of sub-section (2), no person other than—

(*a*) a policeman; or

(*b*) any other medical practitioner nominated by any person who satisfies the magistrate within whose area of jurisdiction such examination takes place, that he has a substantial and peculiar interest in the issue of the examination,

shall be present without the consent of such magistrate or the medical practitioner conducting the examination.

(6) Any person who contravenes the provisions of sub-section (5), or who hinders or obstructs a medical practitioner, a policeman or any person acting on the instructions of a medical practitioner or policeman in carrying out his powers or duties under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

4. Report to public prosecutor.—The policeman investigating the circumstances of the death or alleged death of any person shall submit a report thereon, together with all relevant statements, documents and information, to the public prosecutor, who may, if he deems it necessary, call for any additional information regarding the death.

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 *four* to the magistrate.

(2) If on the information submitted to him in terms of sub-section (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes, he shall proceed to hold an inquest as to the circumstances and cause of the death.

6. Magistrate who is to hold inquest.—An inquest shall be held by the magistrate of the district in which the death is alleged to have occurred, or, where it is alleged that the death has occurred on board a ship or on board an aircraft in flight, by the magistrate of the district where the body has been brought ashore or has been removed from the aircraft, as the case may be, or in case of any doubt or dispute as to any such district or where the Minister or any person authorized thereto by him deems it expedient, by any magistrate designated by the Minister or person so authorized.

[S. 6 substituted by s. 14 of Act No. 29 of 1974.]

7. Notice of inquest to be given.—Except in cases where the spouse or a near adult relative of the alleged deceased person is being subpoenaed as a witness, the magistrate who is to hold an inquest shall cause reasonable notice thereof to be given to such spouse or relative, provided the spouse or relative is available and the giving of such notice will not, in the opinion of the magistrate, unduly delay the holding of the inquest.

8. Witnesses and evidence at inquests.—(1) The magistrate who is to hold or holds an inquest may cause to be subpoenaed any person to give evidence or to produce any document or thing at the inquest.

(2) Save as is otherwise provided in this Act, the laws governing criminal trials in magistrates' courts 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.

9. Assessors at inquests.—(1) A magistrate may with the approval of the Minister or any person acting under the authority of the Minister, summon to his assistance any person who has, or any two persons who have, in his 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 at an inquest as assessor or assessors.

(2) Before the commencement of an inquest, an assessor shall take an oath or make an affirmation, which shall be administered by the magistrate, that he will, on the evidence placed before him, make a true finding in terms of section 16.

(3) Where a magistrate has under subsection (1) summoned an assessor or assessors to his assistance—

(*a*) the magistrate alone shall decide any question of law, or whether any matter constitutes a question of law or a question of fact, and he may for this purpose sit alone;

(*b*) the decision of the majority on the facts shall be the decisive finding, except when the magistrate sits with only one assessor, in which case the decision of the magistrate shall, in the event of a difference of opinion, be the decisive finding.

(4) If any such assessor is not a person in the full-time employment of the State, he shall be entitled to such compensation in respect of expenses incurred by him in connection with his attendance at the inquest, and in respect of his services as assessor, as he would be entitled to receive if he were an assessor acting at a criminal trial in a magistrate's court.

[S. 9 substituted by s. 1 of Act No. 65 of 1979.]

10. When inquest to be held in public.—Unless the giving of oral evidence is dispensed with under this Act, an inquest shall be held in public: Provided that the magistrate holding the inquest may in his discretion exclude from the place where the inquest is held any person whose presence thereat is, in his opinion, not necessary or desirable.

11. Examination of witnesses.—(1) The public prosecutor or any person designated by the magistrate holding an inquest to act in his stead may examine any witness giving evidence at such inquest.

(2) Any other person who satisfies the magistrate that he has a substantial and peculiar interest in the issue of the inquest may personally or by counsel or attorney put such questions to a witness giving evidence at the inquest as the magistrate may allow.

12. Adjournment of inquest, and continuation by different magistrate.—(1) An inquest may, if it is necessary or expedient, be adjourned at any time.

(2) An inquest commenced by any magistrate who through absence, death or incapacity becomes unable to continue such inquest, may be continued by any other magistrate as if the inquest had been commenced by such other magistrate, who may cause any person who has already given evidence at the inquest to be subpoenaed to give evidence as if he had not before so given evidence.

13. Affidavits and interrogatories.—(1) Upon production by any person, any document purporting to be an affidavit made by any person in connection with any death or alleged death in respect of which an inquest is held, shall at the discretion of the magistrate holding the inquest be admissible in proof of the facts stated therein.

(2) The magistrate may in his discretion cause the person who made such affidavit 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.

14. Copies of records of inquiries.—Upon production by any person, any document purporting to be a copy of the record of any inquiry referred to in sub-section (1) of section *twenty-three* and purporting to be certified as a true copy of such record by any person describing himself as the holder of a public office, shall at the discretion of the magistrate holding an inquest in respect of the death which was the subject of such inquiry, be admissible in evidence at the inquest.

15. Taking evidence on commission.—(1) Whenever in the course of any inquest proceedings it appears to the magistrate holding the inquest that the examination of a witness is necessary and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances would be unreasonable, the magistrate may dispense with such attendance and may appoint a person to be a commissioner to take the evidence of such witness, whether within the Union or the territory of South-West Africa or elsewhere, in regard to such matters or facts as the magistrate may indicate, and thereupon the provisions of sub-section (2) of section *two hundred and thirty-five* of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), shall *mutatis mutandis* apply.

(2) Any person mentioned in sub-section (2) of section *eleven* may appear before the person so appointed by counsel or attorney or in person and may examine the said witness.

(3) The evidence recorded in terms of this section shall be admissible in evidence at the inquest.

16. Finding.—(1) If in the case of an inquest where the body of the person concerned is alleged to have been destroyed or where no body has been found or recovered, the evidence proves beyond a reasonable doubt that a death has occurred, the magistrate holding such inquest shall record a finding accordingly, and thereupon the provisions of sub-section (2) shall apply.

(2) The magistrate holding an inquest shall record a finding upon the inquest—

(*a*) as to the identity of the deceased person;

(*b*) as to the cause or likely cause of death;

(*c*) as to the date of the death;

(*d*) as to whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person.

(3) If the magistrate is unable to record any such finding, he shall record that fact.

17. Submission of record to attorney-general.—(1) Upon the determination of an inquest the magistrate concerned shall—

(*a*) if he has in terms of section 16 (3) recorded the fact that he is unable to record any finding mentioned in section 16 (2);

(*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 involving or amounting to an offence on the part of any person; or

(*c*) if requested to do so by the attorney-general within whose area of jurisdiction the inquest was held,

cause the record of the proceedings to be submitted to such attorney-general.

(2) If the attorney-general at any time after the receipt of the record so requests, the magistrate shall re-open the inquest and take further evidence generally or in respect of any particular matter or cause an examination or further examination of a dead body or of any part, internal organ or any of the contents thereof to be made and, if necessary, cause such body to be disinterred for the purpose of the examination, and the provisions of section 3 (3) shall apply to such examination.

[S. 17 substituted by s. 1 of Act No. 46 of 1977.]

18. Certain findings on review equivalent to orders that death should be presumed.—(1) Whenever a magistrate has in the case of an inquest referred to in subsection (1) of section 16 recorded a finding in regard to the matters mentioned in that subsection and in paragraphs (*a*) and (*c*) of subsection (2) of that section, the magistrate shall submit the record of such inquest, together with any comment which he may wish to make, to any provincial or local division of the Supreme Court of South Africa having jurisdiction in the area wherein the inquest was held, for review by the court or a judge thereof.

[Sub-s. (1) substituted by s. 2 of Act No. 46 of 1977.]

(2) Such finding, if confirmed on such review, or, if corrected on review, as so corrected, shall have the same effect as if it were an order granted by such court or such judge that the death of the deceased person concerned should be presumed in accordance with such finding.

(3) Nothing in this Act contained shall affect the right of any person to apply to any competent court for an order that the death of any person should be presumed, or the right of any competent court or any judge thereof to grant any such order.

19. Inquest records.—(1) When the record of any inquest which has been submitted under this Act to an attorney-general or a court is no longer required by such attorney-general or court for the purposes of this Act, it shall be returned to the magistrate concerned.

(2) Such record shall be deemed to form part of the records of the magistrate's court of the district wherein the inquest was held.

20. Offences in connection with inquests.—(1) The provisions of section *one hundred and eight* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall *mutatis mutandis* apply in respect of inquest proceedings as if such proceedings were proceedings of a court contemplated in that section.

(2) 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 prescribed by law for perjury.

(3) Any person who prejudices, influences or anticipates the proceedings or findings at an inquest on which a magistrate has decided in terms of section 5 (2), shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Sub-s. (3) added by s. 2 of Act No. 65 of 1979.]

21. Inquest not to prevent institution of criminal proceedings.—(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 magistrate concerned that criminal proceedings are being or to be instituted in connection with any death in respect of which inquest proceedings may have been instituted, he shall stop such inquest proceedings.

22. Regulations.—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.

23. Savings.—(1) Nothing in this Act contained shall be construed as affecting the provisions of section *eighty-six* of the Prisons Act, 1959 (Act No. 8 of 1959), or of any other law prescribing an inquiry into an accident attended with loss of human life.

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

(3) Notwithstanding anything to the contrary in any other law contained, the magistrate 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 any other law shall be so made.

24. Repeal of laws.—The Fire Inquests Act, 1883 (Act No. 33 of 1883), of the Cape of Good Hope, the Fire Inquests Law, 1884 (Law No. 5 of 1884), of Natal, the Inquests Proclamation, 1920 (Proclamation No. 9 of 1920), of the territory of South-West Africa, the Inquests Amendment Proclamation, 1940 (Proclamation No. 32 of 1940), of the said territory and the Inquests Act, 1919 (Act No. 12 of 1919), are hereby repealed: Provided that the said laws shall continue to apply in respect of any inquest or fire inquest, as the case may be, which at the commencement of this Act has already commenced thereunder or for the holding of which any steps have already been taken thereunder at the commencement of this Act.

25. Application of Act to South-West Africa.—This Act shall apply also in the territory of South-West Africa, including the area known as the Eastern Caprivi Zipfel and described in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Governor-General's Proclamation No. 147 of 1939), and in relation to all persons in the portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory.

26. Short title and date of commencement.—This Act shall be called the Inquests Act, 1959, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

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