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VAN SUIDWES-AFRIKA



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Vrydag 17 Junie 1977

No. 3633

Government Notice

Goewermentskennisgewing

The following Government Notice is published for general information.

H. P. F. GOUS,
Secretary for South West Africa.

Administrator's Office,
Windhoek.

Die volgende Goewermentskennisgewing word vir algemene inligting gepubliseer.

H. P. F. GOUS,
Sekretaris van Suidwes-Afrika.

Kantoor van die Administrateur,
Windhoek.

No. 218]

[17 June 1977

ORDINANCE, 1977: PROMULGATION OF

The Deputy Administrator has been pleased to assent, in terms of section 27 of the South West Africa Constitution Act, 1968 (Act 39 of 1968), to the following Ordinance which is hereby published for general information in terms of section 29 of the said Act:

No. 12 of 1977 Anatomical Donations and Post-Mortem Examinations Ordinance, 1977

No. 218]

[17 Junie 1977

ORDONNANSIE, 1977: UITVAARDIGING VAN

Dit behaag die Waarnemende Administrateur om sy goedkeuring te heg, ooreenkomstig artikel 27 van die Wet op die Konstitusie van Suidwes-Afrika, 1968 (Wet 39 van 1968), aan die volgende Ordonnansie wat hierby vir algemene inligting gepubliseer word ooreenkomstig artikel 29 van gemelde Wet:

No. 12 van 1977 Ordonnansie op Anatomiese Skenkings en Nadoodse Ondersoeke, 1977

**No. 12 of 1977 ANATOMICAL DONATIONS AND POST-MORTEM
EXAMINATIONS ORDINANCE, 1977**

(Assented to 15 June 1977)

(English text signed by the Deputy Administrator)

(Date of commencement 17 June 1977)

ORDINANCE

To provide for the donation of human bodies and human tissue for therapeutic or scientific purposes, for the removal of such tissue and the use thereof in living persons, for the preservation and use of such tissue, and for the post-mortem examination of certain human bodies; and to provide for matters incidental thereto.

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Assembly by message from the Administrator, as follows:—

Definitions.

1. In this Ordinance, unless the context otherwise indicates —

- (i) "authorised institution" means an institution authorised by the Executive Committee to receive, acquire, preserve or use the bodies of deceased persons for therapeutic or scientific purposes or to receive, acquire, preserve, use or issue any tissue for such purposes, or to perform post-mortem examinations of the bodies of deceased persons for any of the purposes stated in section 2(1); (iii)
- (ii) "dentist" means a person registered as a dentist under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974); (ix)
- (iii) "Executive Committee" means the Administrator-in-Executive-Committee referred to in section 6 of the South West Africa Constitution Act, 1968 (Act 39 of 1968); (x)
- (iv) "gonad" means the human tissue or group of germinal cells essential for the reproduction of the species; (v)
- (v) "hospital" means any institution established as a hospital or registered as such under the Hospitals Ordinance, 1972 (Ordinance 14 of 1972); (vii)
- (vi) "medical practitioner" means a person registered as a medical practitioner under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974); (iv)

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- (vii) "mortuary" means any mortuary established as such; (i)
- (viii) "regulation" means a regulation made and in force under this Ordinance; (viii)
- (ix) "Territory" means the Territory of South West Africa; (ii)
- (x) "this Ordinance" includes any regulation; (vi)
- (xi) "tissue" means any human tissue, including any flesh, organ, bone, body fluid or tissue or product derived from it. (xi)

Donation of human bodies or human tissue for therapeutic or scientific purposes.

2. (1) Any person who is competent to make a will may, in his will or in any document attested by at least two competent witnesses or in any statement made orally in the presence of at least two persons of or over the age of eighteen years, donate his body or any part of it to be used after his death for any of the purposes hereinafter stated, or consent to a post-mortem examination of his body for any of the said purposes, and such person may in such will, document or statement name any of the following institutions or persons as donee or donees:

- (a) any hospital or medical practitioner or dentist, for medical or dental education, research, the advancement of medical science, or therapy, including use in any living person or persons;
- (b) any medical or dental school or any university engaged in medical or dental education or research, or any authorised institution, for use in medical or dental education, research or therapy, including use in any other living person or persons, or for use for any other scientific purpose;
- (c) any natural person, for therapy, including the use of any tissue needed by such person.

(2) In the absence of a donation or consent in terms of subsection (1) by any person and of any contrary direction given by such person —

- (a) the spouse or any major child or any parent or guardian or any major brother or any major sister of such person (hereinafter referred to as the persons referred to in paragraph (a)), may after his death donate his body or any part thereof to any institu-

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tion or person referred to in subsection (1) to be used for any of the purposes stated in that subsection, or consent to a post-mortem examination of his body for any of the said purposes; or

(b) a district surgeon may, if none of the persons referred to in paragraph (a) can be traced, in stead of the persons referred to in paragraph (a), after such person has died —

(i) donate any specified tissue from the body of such person, should, in the case of any tissue other than eye tissue, two other medical practitioners have stated in writing that in their opinion the use of such tissue in the body of another person is immediately necessary in order to save the life of such other person; or

(ii) consent to a post-mortem examination of the body of such person for any of the purposes referred to in subsection (1):

Provided that no such donation or consent shall be made or given unless such district surgeon is satisfied that all reasonable steps have been taken to trace the persons referred to in paragraph (a): Provided further that the district surgeon who gives such consent shall not perform such post-mortem examination.

(3) Where any person who has died, has in his will or in any document donated any tissue from his body or has consented to a post-mortem examination of his body, any person who is empowered to give an authorisation in terms of section 5(1), may act upon such will or document if on the face of it it appears to be legally valid and irrespective of the fact that (in the case of a will) such will has not yet been lodged with or accepted by the Master of the Supreme Court.

(4) It shall not be a requirement for the lawfulness of any donation in terms of this section that the person who makes the donation shall specify expressly the purpose of such donation.

(5) Where a person at the time of his death is wearing any identity tag prescribed by regulation which has been issued by an authorised institution approved for that purpose by the Executive Committee, such person shall be deemed to have made a donation, in terms of this section, of his body or of any specified tissue thereof, as the case may be.

(6) (a) Where a person has donated his body or any other body or any part of his body or of any other body without specifying any particular donee, the

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nearest hospital or authorised institution which is interested in acquiring the said body or part of it shall be deemed to be the donee.

- (b) For the purposes of paragraph (a) "nearest hospital or authorised institution" means the hospital or authorised institution which is nearest to the place where the person who donated his body dies or where such other body is, as the case may be.

(7) Where a person in donating any body or any part of it gave conflicting directions, effect shall be given to the direction given last: Provided that where a donation of the entire body was made to one donee and thereafter a donation of a specific tissue or tissues was made to another donee, the donation of the entire body shall be deemed to be a donation of the remainder of the body.

(8) Where any person has donated his body or any part of it to a specific donee and such donee is not readily available at the time and place where the person who so donated his body or any part of it dies, the nearest hospital or authorised institution to such place which is interested in acquiring the said body or part of it, as the case may be, shall be deemed to be the donee.

(9) Upon the death of any person who has donated his body or any part of it, the donee shall have the right to the body of the deceased person or to such part only for the purpose of carrying out, subject to the authorisation referred to in section 5, the wish of the person who made the donation.

(10) Except in the case of a donation of the entire body, the donee shall have twenty-four hours following the death of the person who has donated his body or any part of it within which he may, subject to the authorisation referred to in section 5, remove or cause to be removed the tissue so donated, and after the expiry of the said period of twenty-four hours, whether or not the donee has so removed such tissue or caused such tissue to be so removed, the body may be claimed by the relatives of the deceased or by the person or persons otherwise entitled thereto, with a view to the disposal thereof by way of interment or cremation of the remains or otherwise.

(11) Any donation made or consent given in terms of this section may be revoked prior to his death by the person who made the donation or gave the consent, in the same way in which the donation was made or consent was given or, in the case of a donation or consent by means of a will or other document, also by intentional destruction of such will or

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other document or by oral revocation of such donation or consent before two witnesses.

(12) Nothing in this section contained shall authorise the removal from the body of a deceased person of any tissue for any of the purposes stated in subsection (1) otherwise than by or under the supervision of a medical practitioner or dentist in accordance with an authorisation in terms of section 5.

Removal of tissue from bodies of certain deceased persons.

3. (1) Subject to the authorisation referred to in section 5, removal by or under the supervision of a medical practitioner or dentist of any tissue from the body of any deceased person shall be lawful where such tissue is required for any of the purposes stated in section 2(1): Provided that the use of any gonad without prior authority granted by the Executive Committee in writing shall be unlawful where the result of such use may be procreation, and such use without such prior authority shall constitute an offence punishable in the manner provided for in section 16(2).

(2) For the purposes of this section the death of the person concerned shall be established by at least two medical practitioners, one of whom shall have been practising as a medical practitioner for at least five years after the date on which he was registered as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974), and such two medical practitioners shall not be members of the team of medical practitioners who will use in any living person any tissue removed from the body of the person concerned: Provided that where the tissue so removed is eye tissue or have or is removed thirty minutes or longer after death has set in the provisions of this section shall be deemed to have been complied with if a death certificate in respect of the person from whose body such tissue is removed, has been issued.

Post-mortem examinations of bodies of certain deceased persons.

4. Subject to the authorisation referred to in section 5, a post-mortem examination of the body of a deceased person may be performed by a medical practitioner before its burial or cremation where such examination is necessary for the purpose of determining more precisely the cause of death or for any specified scientific purpose.

Authorisation by magistrate or by specified medical practitioner required for removal of tissue or for post-mortem examination.

5. (1) If any medical practitioner or dentist so requests, the magistrate in whose district any person has died or where the body of any such person is, or the medical practitioner in charge of a mortuary or of a hospital or authorised institution in which any person has died, or any other medical practitioner employed at that mortuary, hospital or authorised institution and designated by the said medical practitioner in charge, may, notwithstanding anything to the contrary in any law contained, but subject to the provisions of any Act by the Parliament of the Republic of South Africa which is applicable to the Territory —

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- (a) authorise the medical practitioner or dentist who so requests, to remove, subject to such conditions as may be prescribed by regulation, any specified tissue from the body of such person before its burial or cremation; or
- (b) authorise the medical practitioner who so requests, to perform, subject to such conditions as may be prescribed by regulation, a post-mortem examination of the body of such person before its burial or cremation:

Provided that in the case of eye tissue which is removed by or under the supervision of a medical practitioner, no such authorisation shall be necessary.

(2) No authorisation shall be given or removal of eye tissue made under subsection (1) unless the magistrate or medical practitioner concerned is satisfied that —

(a) a donation of such tissue or consent to such post-mortem examination has been made or given in terms of section 2;

(b) the body is no longer required for the purpose of an examination in accordance with —

(i) ~~section 73 of the Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963):~~

Provided that where the medical practitioner, who in the area concerned is generally in charge of examinations in terms of the said section, certifies that in his opinion the removal of any specified tissue will in no way affect the outcome of such an examination, and consents to such removal, such authorisation may be given for the removal of such tissue for any of the purposes stated in section 2(1);

(ii) ~~section 3 of the Inquests Act, 1959 (Act 58 of 1959):~~ Provided that where the medical practitioner, who in the area concerned is generally in charge of examinations in terms of the said section, certifies that in his opinion the removal of any specified tissue will in no way affect the outcome of such an examination and consents to such removal, such authorisation may be given for the removal of such tissue for any of the purposes stated in section 2(1);

(iii) ~~section 34 of the Public Health Act, 1919 (Act 36 of 1919), as applied to the Territory and amended for that purpose by the Public Health Proclamation, 1920 (Proclamation 36 of 1920);~~

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(iv) section 25 of the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963);

(v) section 34 of the Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973)
and

(c) the removal of any specified tissue or the post-mortem examination is necessary for any of the purposes stated in section 2(1) or 4, as the case may be.

Reports on authorisations for removal of tissue and on removals of eye tissue.

6. Any person who, in terms of section 5, gives an authorisation for the removal of any specified tissue or removes any eye tissue, from the body of a person who has died, shall, within twenty-one days after the death of the person concerned, transmit by registered mail as a confidential document to the Secretary for South West Africa a report of such authorisation or removal together with a written statement in which the following particulars shall be set forth:

- (a) the name, age, sex and population group of the deceased person and the date and place of his death;
- (b) the name or names of the medical practitioner or medical practitioners, as the case may be, who in terms of section 3(2) established the death of the deceased person;
- (c) a description of the tissue removed and of the purpose for which such removal was effected;
- (d) the name of the medical practitioner or dentist in charge of the operation whereby the removal of the tissue was effected;
- (e) the name of the person who consented to the removal of the tissue and the manner in which such consent was given; and
- (f) in the event of the use within the said period of twenty-one days of any such tissue in another person, the name of such person and the name of the medical practitioner or dentist in charge of the operation in which such tissue was so used or, where such tissue was delivered to an authorised institution, the name of such institution.

Removal of tissue at certain post-mortem examinations.

7. (1) Notwithstanding anything to the contrary in any law contained but subject to the provisions of subsection (2) and of any Act by the Parliament of the Republic of South Africa which is applicable to the Territory and such conditions as may be prescribed by regulation, a district surgeon or any other medical practitioner who performs a post-mortem examination of the body of a deceased person

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under section 3 of the Inquests Act, 1959 (Act 58 of 1959), may remove any tissue prescribed by regulation from such body and donate such tissue to any authorised institution so prescribed for receipt and use or issue for such of the purposes stated in section 2(1) as may be so prescribed.

(2) The provisions of section 3(2) and 5 shall not apply with reference to the removal of any tissue under subsection (1) but no such removal shall be made if the district surgeon or other medical practitioner performing the post-mortem examination of the body in question —

- (a) is not satisfied that the removal of the tissue will in no way affect the outcome of such examination; or
- (b) at the time of such examination has reason to believe that such body or the tissue in question has been donated as contemplated in section 2 or that the removal would be contrary to any direction given by the deceased person before his death.

Removal of tissue from bodies of living persons for therapeutic or scientific purposes.

8. (1) Subject to the provisions of this section, the removal of any tissue by a medical practitioner or dentist from the body of a living person shall be lawful where such removal is necessary for any therapeutic or scientific purpose, including the use of such tissue in the body of any other living person: Provided that the use of any gonad so removed, in the body of another person, other than the spouse of the person from whose body such gonad was removed, without prior authority granted by the Executive Committee in writing, shall be unlawful where the result of such use may be procreation, and such use without such prior authority shall constitute an offence punishable in the manner provided for in section 16(2).

(2) No removal of any tissue from the body of a living person for use in the body of any other living person shall take place unless such removal is authorised in writing by the medical practitioner in charge of the hospital or authorised institution in which such removal takes place, and such medical practitioner in charge shall not be a member of the team of medical practitioners who will thereafter use such tissue in the body of any other living person.

(3) Save as provided in subsection (5), no removal of any tissue from the body of a minor or a person who is mentally ill within the meaning of the Mental Health Act, 1973 (Act 18 of 1973), for use in the body of another living person, shall be effected.

(4) No removal of tissue from the body of any living person for the purposes of this section shall be effected unless consent has been given in writing —

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(a) in the case of an adult, for any purpose stated in subsection (1), by such person; or

(b) in the case of a minor, for any purpose not prohibited by subsection (3), by the parents or guardians of such minor.

(5) For the removal for any therapeutic or scientific purpose of blood, skin or other tissue which is replaceable by natural processes of repair, from the body of any person who is capable of validly expressing his will, whether or not he is of age, the consent of such person to such removal shall be sufficient, whether such consent be in writing or otherwise, and the written authority referred to in subsection (2) shall not be required: Provided that no such removal from the body of a person under the age of fourteen years shall be effected without the consent in writing of the parents or guardians of such person.

Rights concerning tissue.

9. Subject to the provisions of sections 11 and 15 and the regulations any person to whom any body or any tissue is donated in terms of section 2 or 7 or who acquires any tissue in terms of section 3 or 8 shall, upon delivery of such tissue to him by way of use or otherwise, as the case may be, be vested with the exclusive rights over such tissue.

Exclusion of civil and criminal liability in respect of *bona fide* act of medical practitioner, dentist or magistrate.

10. (1) No medical practitioner or dentist who has removed any tissue from the body of a deceased person for any of the purposes stated in section 2(1) or who has performed a post-mortem examination for any of the purposes stated in section 4 or who has removed any tissue from the body of a living person for any of the purposes stated in section 8 and no magistrate or medical practitioner who has given any authorisation in terms of section 5, shall incur any legal liability, whether civil or criminal, in respect of any such act in the event of any consent given by any person being subsequently proved to be legally invalid because of a will being declared null and void or for any other reason, unless it is proved that such medical practitioner or dentist or magistrate at the time of performing such act was aware of the fact that any purported consent was in fact legally void.

(2) Subsection (1) shall not be interpreted as extending in any way the existing principles of civil or criminal liability.

Sale of tissue prohibited.

11. (1) No person other than an authorised institution may receive any payment for providing to any other person any tissue (other than blood or a blood product) removed from the body of any deceased or living person, and any such payment which has in fact been received, shall be refundable to the person who made it.

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(2) Any person other than an authorised institution who in consideration for any fee, profit or remuneration procures for any other person any tissue (other than blood or a blood product) from the body of any deceased or living person, shall be guilty of an offence and shall upon conviction be punishable in the manner provided for in section 16(2).

(3) Nothing in this section contained shall prevent any medical practitioner or dentist from receiving remuneration for any professional service rendered by him to any person.

Acquisition, preservation, use and issue of tissue by authorised institutions.

12. (1) An authorised institution may receive, acquire, preserve or use any tissue which has been lawfully removed from —

- (a) the body of a deceased person under the provisions of this Ordinance; or
- (b) the body of a living person.

(2) An authorised institution may at any time issue any tissue in its possession to a medical practitioner or dentist for therapeutic or scientific purposes.

Savings.

13. Nothing in this Ordinance contained shall render unlawful —

- (a) the preparation of the body of a deceased person for the purpose of embalming it, whether or not such preparation involves the making of incisions for the purpose of drawing off blood and its replacement by any preservative, or the restoration of any disfigurement or mutilation of the body of a deceased person prior to its burial or cremation; or
- (b) the removal from the body of any person with his consent or that of any other person who may in law consent on his behalf, of tissue in the interests of the health of the first-mentioned person and the preservation and use of such tissue for therapeutic or scientific purposes.

Regulations.

14. (1) The Executive Committee may make regulations in relation to —

- (a) the form in which any application shall be made or authorisation shall be given under section 5;
- (b) the conditions subject to which a post-mortem examination may be performed or tissue may be removed from the body of a deceased or living person under this Ordinance;

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- (c) the submission of reports to any specified authority by a medical practitioner who in terms of section 8 has removed any tissue from the body of a living person or who has performed a post-mortem examination in terms of this Ordinance, and the period within which such reports shall be submitted;
- (d) the preservation, use, issue or disposal of any tissue removed from the body of a deceased or living person;
- (e)(i) the tissue that a district surgeon or other medical practitioner performing a post-mortem examination of the body of a deceased person under section 3 of the Inquests Act, 1959 (Act 58 of 1959), may remove from such body under section 7 of this Ordinance;
- (ii) the authorised institution or authorised institutions to which any such tissue so removed under the said section 7 shall be donated by any such district surgeon or other medical practitioner, and the purpose or purposes stated in section 2(1) for which such tissue may be received and used or issued by the authorised institution to which it is donated;
- (iii) the hospitals, medical practitioners or dentists, or medical or dental schools at universities, to which or to whom such tissue so removed or any therapeutic substance derived from it may be made available by any such authorised institution, and the moneys that it may charge in respect of any such tissue or substance so made available by it;
- (iv) the reports to be compiled in respect of tissue removed under section 7, the persons by whom such reports shall be compiled and the authorities to whom such reports shall be submitted;
- (f) the receipt, preservation, use or disposal of the body of a deceased person;
- (g) the requirements with which an authorised institution shall comply;
- (h) the form of any identity tag referred to in section 2(5), the particulars which shall appear on any such identity tag and the records which shall be kept by any authorised institution which issues any such identity tag; and

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(i) generally, any matter which the Executive Committee may consider necessary or expedient to prescribe in order that the purposes of this Ordinance may be achieved.

(2) The Executive Committee shall not under subsection (1)(e)(i) prescribe any tissue except upon the recommendation —

(a) in the case of tissue required for the preparation of any therapeutic substance, of the Medicines Control Council established by section 2 of the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

(b) in the case of tissue required for any other purpose, of the South African Medical Research Council established by section 2 of the South African Medical Research Council Act, 1969 (Act 19 of 1969).

(3) The Executive Committee shall, not less than three months before any regulation is made under subsection (1)(e), cause a draft of such regulation to be published in the *Official Gazette* together with a notice declaring its intention to make such a regulation and inviting interested persons to lodge comments thereon or representations in regard thereto with the Secretary for South West Africa: Provided that, if the Executive Committee thereafter determines upon any alteration in the draft regulation published as aforesaid, as a result of any comments or representations submitted in respect thereof, it shall not be necessary to publish the alteration in terms of this subsection before the amended draft is published as a regulation under subsection (1)(e).

(4) Any regulation made under subsection (1)(e) shall be laid upon the Table of the Legislative Assembly within fourteen days after promulgation thereof if the Legislative Assembly is then in ordinary session, or, if the Legislative Assembly is not then in ordinary session, within fourteen days of the commencement of its next ensuing ordinary session.

(5) If the Legislative Assembly by resolution taken during the session in which any regulation is laid upon the Table as provided in subsection (4), disapprove of such regulation or any provision thereof, such regulation or such provision thereof shall cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such regulation or such provision thereof up to the date upon which it so ceases to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under such regulation or such provision thereof.

Publication of identity of donor or recipient of body or tissue prohibited.

15. (1) No person shall publish to any other person any fact whereby the identity of the donor of the body of a deceased person or of any tissue thereof or the donor of

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tissue removed from the body of a living person may possibly be established, unless consented thereto in writing by the deceased person concerned prior to his death or by the living donor, or, after the death of the person whose body or tissue has been donated, by a donor referred to in section 2(2)(a), or by the district surgeon referred to in section 2(2)(b).

(2) No person shall publish to any other person any fact whereby the identity of the recipient of any tissue removed from the body of any other person before or after the death of such other person may possibly be established, unless such recipient has consented thereto in writing: Provided that in the event of the death of the recipient without his having given such consent or without his having indicated that he would not be prepared to give such consent, consent may be given in writing by the spouse or a major child or a parent or a major brother or a major sister of the recipient.

(3) Any person who contravenes or fails to comply with any provision of subsection (1) or (2) shall be guilty of an offence and shall upon conviction be punishable in the manner provided for in section 16(2).

Penalties.

16. (1) Any person who —

- (a) removes any tissue from the body of a deceased person or performs a post-mortem examination of such body otherwise than in accordance with any law or without the written authorisation of a magistrate or medical practitioner in terms of section 5; or
- (b) being a medical practitioner in charge of a mortuary, hospital or authorised institution, or any other medical practitioner employed at a mortuary, hospital or authorised institution and designated by the medical practitioner in charge, and being authorised in terms of section 5(1) to grant the authorisation therein referred to, grants such authorisation otherwise than in accordance with the provisions of section 5,

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.

(2) Any person who is convicted of an offence referred to in section 3(1), 8(1), 11(2) or 15 shall be liable to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months.

Repeal of Ordinance.

17. The Post-Mortem Examination and Removal of Human Tissues Ordinance, 1956 (Ordinance 21 of 1956), is hereby repealed.

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Short title.

18. This Ordinance shall be called the Anatomical Donations and Post-Mortem Examinations Ordinance, 1977.