

REPUBLIC OF SOUTH AFRICA

ABOLITION OF CORPORAL PUNISHMENT BILL

(As amended by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 20B—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE AFSKAFFING VAN LYFSTRAF

(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

(MINISTER VAN JUSTISIE)

[W 20B—97]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To provide for the abolishment of corporal punishment authorised in legislation; and to provide for matters connected therewith.

—

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Abolition of corporal punishment

1. Any law which authorises corporal punishment by a court of law, including a court of traditional leaders, is hereby repealed to the extent that it authorises such punishment. 5

Amendment or repeal of laws

2. The laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.

Short title

3. This Act shall be called the Abolition of Corporal Punishment Act, 1997. 10

SCHEDULE

(Laws amended or repealed by section 2)

No. and year of law	Short title	Extent of amendment or repeal
Act No. 38 of 1927	Black Administration Act, 1927	<p>Amendment of section 20 by the substitution for the proviso to subsection (2) of the following proviso:</p> <p>“Provided that in the exercise of the jurisdiction conferred upon him <u>or her</u> under subsection (1) a chief, headman or chief’s deputy may not inflict any punishment involving death, mutilation, grievous bodily harm or imprisonment or impose a fine in excess of [twenty pounds] <u>R100</u> or two head of large stock or ten head of small stock or impose corporal punishment [save in the case of unmarried males below the apparent age of thirty years].”.</p>
Act No. 32 of 1944	Magistrates’ Courts Act, 1944	Amendment of section 92 by the deletion of paragraph (c) of subsection (1).
Act No. 3 of 1957	Witchcraft Suppression Act, 1957	<p>Amendment of section 1 by the substitution for paragraphs (i) and (ii) of the following paragraphs, respectively:</p> <p>“(i) in the case of an offence referred to in paragraph (a) or (b) in consequence of which the person in respect of whom such offence was committed, has been killed, or where the accused has been proved to be by habit or repute a witchdoctor or witch-finder, to imprisonment for a period not exceeding 20 years [or to a whipping not exceeding ten strokes or to both such imprisonment and such whipping];</p>

No. and year of law	Short title	Extent of amendment or repeal
Act No. 57 of 1959	Stock Theft Act, 1959	<p>(ii) in the case of any other offence referred to in the said paragraphs, to [one or more of the following penalties, namely] a fine [not exceeding one thousand rand] or imprisonment for a period not exceeding ten years [and a whipping not exceeding ten strokes];”.</p> <p>Amendment of section 13—</p> <p>(a) by the deletion of subparagraphs (iii) and (iv) of paragraph (a); and</p> <p>(b) by the deletion of subparagraphs (ii) and (iii) of paragraph (b).</p>
Act No. 71 of 1962	Animals Protection Act, 1962	<p>Amendment of section 2 by the substitution in subsection (1) for the words following upon paragraph (s) of the following words:</p> <p>“shall, subject to the provisions of this Act and any other law, be guilty of an offence and liable on conviction to a fine [not exceeding R4 000 or in default of payment] or to imprisonment for a period not exceeding 12 months or to such imprisonment without the option of a fine [or, where any such act or omission is of a wilful and an aggravated nature, to a whipping not exceeding six strokes or to both such a fine and such a whipping or to both such imprisonment without the option of a fine and such a whipping].”.</p>
Act No. 71 of 1968	Dangerous Weapons Act, 1968	<p>Amendment of section 4 by the substitution for subsections (1) and (2) of the following subsections, respectively:</p> <p>“(1) Whenever a person above the age of 18 years is convicted of an offence involving violence to any other person and it has been proved that he or she killed or injured such</p>

No. and year of law	Short title	Extent of amendment or repeal
Act No. 57 of 1976	National Parks Act, 1976	<p>other person by using a dangerous weapon or a firearm, he or she shall, except when [the death sentence is imposed or] he or she is in terms of section 286 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), declared an habitual criminal, notwithstanding anything to the contrary in any law contained, be sentenced to imprisonment for a period of not less than two years, and if he or she is so convicted by a magistrate's court, not exceeding eight years [and may in addition to any such punishment be sentenced to a whipping not exceeding seven strokes]: Provided that if the court is of the opinion that there are circumstances which justify the imposition of a lighter sentence than the punishment prescribed by this section, it shall enter those circumstances on the record of the proceedings and may thereupon impose such lighter sentence on the person so convicted: Provided further that in the case of a magistrate's court [and without derogation from its powers to impose a whipping], such lighter sentence shall not exceed a fine of [R8 000] R40 000 or imprisonment for a period of two years.</p> <p>(2) Notwithstanding anything to the contrary in any law contained, no person in respect of whom the imposition of a sentence of imprisonment is compulsory in terms of subsection (1), shall be dealt with under section 290 [294] or 297 of the Criminal Procedure Act, 1977.”.</p> <p>Amendment of section 24— <i>(a)</i> by the substitution for paragraph <i>(a)</i> of subsection (1) of the following paragraph: “(a) any animal specified in Schedule 2, except an elephant, black rhinoceros and white rhinoceros, shall be guilty of an offence and liable on conviction to a fine of not less than R4 000</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>and not more than R8 000 or, in default of payment of such fine, to imprisonment for a period of not less than one year and not more than two years or, if such person has been previously convicted under this subsection or subsection (2), he or she may be sentenced to such imprisonment without the option of a fine [and, if the court so convicting such person finds that the contravention was wilful, it may on a first or subsequent conviction in addition to any fine or imprisonment to which such person may be sentenced, sentence such person to corporal punishment not exceeding seven strokes];”;</p> <p>(b) by the deletion in subsection (1) of subparagraph (bb) of paragraph (b);</p> <p>(c) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any person who contravenes the provisions of paragraph (c) of subsection (1) of section 21 with reference to any animal not specified in Schedule 2, or paragraph (f) of that subsection with reference to a veld fire, shall be guilty of an offence and liable on conviction to a fine of not less than R1 000 and not more than R6 000 or, in default of payment of such fine, to imprisonment for a period of not less than three months and not more than 18 months or, if such person has been previously convicted under this subsection or under subsection (1), to such imprisonment without the option</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>of a fine [and, if the court so convicting such person finds that the contravention was wilful, it may on a first or subsequent conviction, in addition to any fine or imprisonment to which such person may be sentenced, sentence such person to corporal punishment not exceeding seven strokes].”;</p> <p>(d) by the substitution for subsections (5) and (6) of the following subsections, respectively:</p> <p>“(5) Any person who contravenes the provisions of section 21(1)(i) with reference to a tree or other plant specified in Schedule 3, shall be guilty of an offence and liable on conviction to a fine of not less than R1 000 and not more than R6 000 or, in default of payment of such fine, to imprisonment for a period of not less than three months and not more than 18 months or, if such person has been previously convicted under this subsection or subsection (6), <u>he or she</u> may be sentenced to such imprisonment without the option of a fine [and, if the court so convicting such person finds that the contravention was wilful, it may on a first or subsequent conviction in addition to any fine or imprisonment to which such person may be sentenced, sentence such person to corporal punishment not exceeding seven strokes].</p> <p>(6) Any person who contravenes the provisions of section 21(1)(i) with reference to a tree or other plant not specified in Schedule 3, shall be guilty of an offence and liable on conviction to a fine of not less than R300 and not more than R1 500 or, in default of payment of such fine, to imprisonment for a period of not</p>

No. and year of law	Short title	Extent of amendment or repeal
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>less than one month and not more than four months or, if such person has been previously convicted under this subsection or subsection (5), to such imprisonment without the option of a fine [and, if the court so convicting such person finds that the contravention was wilful, it may on a first or subsequent conviction in addition to any fine or imprisonment to which such person may be sentenced, sentence such person to corporal punishment not exceeding seven strokes].”.</p> <p>(a) Amendment of section 112 by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:</p> <p>“(a) [the presiding judge may, if he is of the opinion that the offence does not merit the sentence of death, or] the presiding judge, regional magistrate or magistrate may, if he <u>or she</u> is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine [or of a whipping] or of a fine exceeding the amount determined by the Minister from time to time by notice in the <i>Gazette</i>, convict the accused in respect of the offence to which he <u>or she</u> has pleaded guilty on his <u>or her</u> plea of guilty only and—</p> <p>(i) impose any competent sentence, other than [the sentence of death or] imprisonment or any other form of detention without the</p>

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		<p>option of a fine [or a whipping] or a fine exceeding the amount determined by the Minister from time to time by notice in the <i>Gazette</i>; or</p> <p>(ii) deal with the accused otherwise in accordance with law;</p> <p>(b) [the presiding judge shall, if he is of the opinion that the offence merits the sentence of death, or] the presiding judge, regional magistrate or magistrate shall, if he <u>or she</u> is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine [or of a whipping] or of a fine exceeding the amount determined by the Minister from time to time by notice in the <i>Gazette</i>, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether he <u>or she</u> admits the allegations in the charge to which he <u>or she</u> has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he <u>or she</u> has pleaded guilty, convict the accused on his <u>or her</u> plea of guilty of that offence and impose any competent sentence [Provided that the sentence of death shall not be imposed unless the guilt of the accused has been proved as if he had pleaded not guilty.”].</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>(b) Amendment of section 276 by the deletion of paragraph (g) of subsection (1).</p> <p>(c) Amendment of section 290 by the substitution for subsection (2) of the following subsection: “(2) Any court which sentences a person under the age of 18 years to a fine [or a whipping] may, in addition to imposing such punishment, deal with him or her in terms of paragraph (a), (b), (c) or (d) of subsection (1).”.</p> <p>(d) Repeal of sections 292, 293, 294 and 295.</p> <p>(e) Amendment of section 302 by the deletion in subsection (1) of subparagraph (iii) of paragraph (a).</p> <p>(f) Repeal of section 308.</p> <p>(g) Amendment of section 309 by the substitution for paragraph (b) of subsection (4) of the following paragraph: “(b) sections 307 [308] and 308A shall <i>mutatis mutandis</i> apply with reference to the sentence appealed against [including a sentence of a whipping imposed under section 294].”.</p> <p>(h) Amendment of section 321 by the deletion of paragraph (a) of subsection (1).</p>

**MEMORANDUM ON THE OBJECTS OF THE ABOLITION OF
CORPORAL PUNISHMENT BILL, 1997**

1. Section 294 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), provides that a male person under the age of 21 years, upon conviction of any offence, may be sentenced to receive a moderate correction of a whipping not exceeding seven strokes. Our law furthermore allows whipping as a punishment which may be imposed upon adult males between the ages of 21 and 30 years (See section 276, read with sections 294 and 295(1) of the Criminal Procedure Act, 1977.).

2. However, in terms of section 10 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (“the Constitution”), every person shall have the right to respect for and protection of his or her dignity. Section 11(2) of the Constitution furthermore provides that no person shall be subject to torture of any kind, whether physical, mental or emotional, or be subject to cruel, inhuman or degrading treatment or punishment.

3. In *S v Williams and Others*, 1995 (3) SA 632 (CC) the Constitutional Court had to decide on the issue whether the sentence of juvenile whipping, pursuant to the provisions of section 294 of the Criminal Procedure Act, 1977, is consistent with the provisions of the Constitution. Langa J at 658 F—G remarked as follows:

“I accordingly find that the provisions of section 294 of the Act violate the provisions of ss 10 and 11(2) of the Constitution and that they cannot be saved by the operation of section 33(1) of the Constitution. Although the provision concerned is a law of general application, the limitation it imposes on the rights in question is, in the light of all circumstances, not reasonable, not justifiable and is furthermore not necessary. The provisions are therefore unconstitutional.”.

4. Although the above decision was primarily concerned with the question of the constitutionality of juvenile whipping as a form of punishment, the underlying principles and sentiments are equally applicable to whipping as a punishment imposed upon adult males. Consequently, the main object of this Bill is to abolish corporal punishment by proposing in clause 1 that all laws which authorise corporal punishment by a court of law, including a court of traditional leaders, be repealed to the extent that they authorise corporal punishment.

5. Clause 3 seeks the amendment of the following laws which contain provisions in terms of which corporal punishment may be imposed:

- (a) the Black Administration Act, 1927 (Act No. 38 of 1927);
- (b) the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);
- (c) the Witchcraft Suppression Act, 1957 (Act No. 3 of 1957);
- (d) the Stock Theft Act, 1959 (Act No. 57 of 1959);
- (e) the Animals Protection Act, 1962 (Act No. 71 of 1962);
- (f) the Dangerous Weapons Act, 1968 (Act No. 71 of 1968);
- (g) the National Parks Act, 1976 (Act No. 57 of 1976); and
- (h) the Criminal Procedure Act, 1977.

In the opinion of the Department and the State Law Advisers this Bill must be dealt with in terms of section 75 of the Constitution.