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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1164.

5 September 1997

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 33 of 1997: Abolition of Corporal Punishment Act, 1997.

No. 1164.

5 September 1997

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 33 van 1997: Wet op die Afskaffing van Lyfstraf, 1997.

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.
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ACT

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

(English text signed by the President.)
(Assented to 28 August 1997.)

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 Any law which authorises corporal punishment by a court of law, including a court of traditional leaders, is hereby repealed to the extent that it authorises such punishment. 5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 The laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.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(Laws amended or repealed by section 2)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	Amendment of section 20 by the substitution for [he proviso to subsection (2) of the following proviso: “Provided that in the exercise of the jurisdiction conferred upon him or her 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] R 100 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].”.
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	Amendment of section 1 by the substitution for paragraphs (i) and (ii) of the following paragraphs, respectively: “(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] ;

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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>

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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>i)</i> by the substitution for paragraph (a) 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 2 I 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>

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		<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><i>d)</i> 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 <i>fine</i>, 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), 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>(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 <i>fine</i>, to imprisonment for a period of not</p>

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Act No. 5 I of 1977	Criminal Procedure Act, 1977	<p>less than one month and not more than <i>four months or</i>, 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 1 I 2 by the substitution <i>for</i> 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 or she has pleaded guilty on his or her 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 <i>amount</i> 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 or she is of [he 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 <i>amount</i> 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 or she admits the allegations in [he charge to which he or she has pleaded <i>guilty</i>, <i>and</i> may, if satisfied that the accused is guilty of the offence to which he or she has pleaded <i>guilt</i>), convict [he accused on his or her 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>

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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:</p> <p>“(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:</p> <p>“(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>