

CHANGES TO OUR COURTS: THE CONSTITUTION 17TH AMENDMENT ACT

A Parliament recently passed the 17th Constitutional Amendment Act by more than the required two-thirds majority. The new law entrenches the Constitutional Court as the highest Court in the land, while ensuring that the Supreme Court of Appeal's role is not reduced to a shadow of what it used to be. Let's have a look at the changes.

Why we have Courts – underlying principles

One of the basic tenets of the rule of law is that anyone may challenge the legality of a law or of someone's conduct. It is a principle which is mirrored by the Latin maxim '*ubi jus ibi remedium*' (where there is a right, there must be a remedy) – in other words, in order to give effect to the right to challenge the legality of law or conduct, there must be an independent entity capable of enforcing it.

Over the past two decades our law has evolved from draconian laws and an era of Parliamentary sovereignty, to a modern and democratic society. The Constitution provides for an independent, fair and impartial judiciary, with the Constitutional Court becoming the highest Court in South Africa.

The seventeenth amendment act

The Constitution Seventeenth Amendment Act, as the name suggests, makes changes to the Constitution. The most notable changes are to:

- (i) make the Chief Justice the head of the judiciary.
- (ii) make the Constitutional Court the highest court in the country for all matters. (Previously the latter Court was the highest court for constitutional matters while the Supreme Court of Appeal was the highest court for all other matters).
- (iii) extend the jurisdiction of the Constitutional Court and amend jurisdiction of the Supreme Court of Appeal. The Constitutional Court may now hear matters other than those with a constitutional impact. Its jurisdiction is significantly increased by the provision that it can also hear any matter, when approached on appeal, to do so, that "*raises an arguable point of law of general public importance which ought to be considered by that Court*".

The Superior Courts Act, signed into law on 12 August 2013, implements the changes legislated in the Constitution Seventeenth Amendment Act. Notably, it ensures that there will be a High Court division in each of the country's nine provinces. The new divisions will be the following:

Previous Court	New Division
Eastern Cape High Court, Bhisho	
Eastern Cape High Court, Grahamstown	Eastern Cape Division (main seat at Grahamstown)
Eastern Cape High Court, Mthatha	
Eastern Cape High Court, Port Elizabeth	
Free State High Court, Bloemfontein	Free State Division
North Gauteng High Court, Pretoria	Gauteng Division (main seat at Pretoria)
South Gauteng High Court, Johannesburg	
KwaZulu-Natal High Court, Durban	
KwaZulu-Natal High Court, Pietermaritzburg	KwaZulu-Natal Division (main seat at Pietermaritzburg)
<i>New court to be created at Polokwane</i>	Limpopo Division (main seat at Polokwane)
Limpopo High Court, Thohoyandou	
<i>New court to be created at Nelspruit</i>	Mpumalanga Division
Northern Cape High Court, Kimberley	Northern Cape Division
North West High Court, Mahikeng	North West Division
Western Cape High Court, Cape Town	Western Cape Division

For a more detailed discussion of the courts' system in South Africa, read [this in-depth post on our website](#).

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