

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.

(English text signed by the President)
(Assented to 1 February 2013)

ACT

To amend the Constitution of the Republic of South Africa, 1996, so as to further define the role of the Chief Justice as the head of the judiciary; to provide for a single High Court of South Africa; to provide that the Constitutional Court is the highest court in all matters; to further regulate the jurisdiction of the Constitutional Court and the Supreme Court of Appeal; to provide for the appointment of an Acting Deputy Chief Justice; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 165 of Constitution

1. Section 165 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the addition of the following subsection: 5

“(6) The Chief Justice is the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.”.

Amendment of section 166 of Constitution 10

2. Section 166 of the Constitution is hereby amended—

- (a) by the substitution for paragraph (c) of the following paragraph: 15
- “(c) the [**High Courts, including** High Court of South Africa, and any high court of appeal that may be established by an Act of Parliament to hear appeals from [**High Courts**] any court of a status similar to the High Court of South Africa;”]; and
- (b) by the substitution for paragraph (e) of the following paragraph:
- “(e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the [**High Courts**] High Court of South Africa or the Magistrates’ 20 Courts.”.

Amendment of section 167 of Constitution, as amended by section 11 of Constitution Sixth Amendment Act of 2001

3. Section 167 of the Constitution is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 5
 “(3) The Constitutional Court—
 (a) is the highest court [**in all constitutional matters**] of the Republic; and
 (b) may decide [**only**]— 10
 (i) constitutional matters[, **and issues connected with decisions on constitutional matters**]; and
 (ii) any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court; and
 (c) makes the final decision whether a matter is [**a constitutional matter or whether an issue is connected with a decision on a constitutional matter**] within its jurisdiction.”; and 15
 (b) by the substitution for subsection (5) of the following subsection:
 “(5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is 20
 constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, [**a**] the High Court of South Africa, or a court of similar status, before that order has any force.”.

Amendment of section 168 of Constitution, as amended by section 12 of Constitution Sixth Amendment Act of 2001 25

4. Section 168 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) (a) The Supreme Court of Appeal may decide appeals in any matter arising from the High Court of South Africa or a court of a status similar to the High Court of South Africa, except in respect of labour or competition matters to such extent as may be determined by an Act of Parliament. 30
 (b) The Supreme Court of Appeal may decide only—
 (i) appeals;
 (ii) issues connected with appeals; and
 (iii) any other matter that may be referred to it in circumstances defined by an Act of Parliament.” 35

Substitution of section 169 of Constitution

5. The following section is hereby substituted for section 169 of the Constitution:

“High [Courts] Court of South Africa

- 169.** (1) [**A**] The High Court of South Africa may decide— 40
 (a) any constitutional matter except a matter that—
 (i) [**only**] the Constitutional Court [**may decide**] has agreed to hear directly in terms of section 167(6)(a); or
 (ii) is assigned by an Act of Parliament to another court of a status similar to [**a**] the High Court of South Africa; and 45
 (b) any other matter not assigned to another court by an Act of Parliament.

- (2) The High Court of South Africa consists of the Divisions determined by an Act of Parliament, which Act must provide for—
- (a) the establishing of Divisions, with one or more seats in a Division; and
 - (b) the assigning of jurisdiction to a Division or a seat within a Division.
- (3) Each Division of the High Court of South Africa—
- (a) has a Judge President;
 - (b) may have one or more Deputy Judges President; and
 - (c) has the number of other judges determined in terms of national legislation.”.

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Substitution of section 170 of Constitution

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6. The following section is hereby substituted for section 170 of the Constitution:

“[Magistrates’ Courts and other] Other courts

170. [Magistrates’ Courts and all other courts] All courts other than those referred to in sections 167, 168 and 169 may decide any matter determined by an Act of Parliament, but a court of a status lower than [a] the High Court of South Africa may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.”.

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Amendment of section 172 of Constitution

7. Section 172 of the Constitution is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

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“(a) The Supreme Court of Appeal, [a] the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.”.

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Substitution of section 173 of Constitution

8. The following section is hereby substituted for section 173 of the Constitution:

“Inherent power

173. The Constitutional Court, the Supreme Court of Appeal and the High [Courts have] Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.”.

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Substitution of section 175 of Constitution, as amended by section 14 of Constitution Sixth Amendment Act of 2001

9. The following section is hereby substituted for section 175 of the Constitution:

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“[Acting] Appointment of acting judges

175. (1) The President may appoint a woman or man to [be] serve as an acting Deputy Chief Justice or judge of the Constitutional Court if there is a vacancy in any of those offices, or if [a judge] the person holding such an office is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the Chief Justice, and an appointment as acting Deputy Chief Justice must be made from the ranks of the judges who had been appointed to the Constitutional Court in terms of section 174(4).

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(2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve.”.

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Amendment of section 178 of Constitution, as amended by section 2 of Constitution Second Amendment Act of 1998 and section 16 of Constitution Sixth Amendment Act of 2001

10. Section 178 of the Constitution is hereby amended by the substitution in subsection (1) for paragraph (k) of the following paragraph: 5

“(k) when considering matters relating to a specific Division of the High Court of South Africa, the Judge President of that [**Court**] Division and the Premier of the province concerned, or an alternate designated by each of them.”.

Short title and commencement

11. This Act is called the Constitution Seventeenth Amendment Act of 2012, and takes 10 effect on a date determined by the President by proclamation in the *Gazette*.