

# THE SOUTH AFRICAN JUDICIARY





Constitutional Court  
Justices of South Africa







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## THE JUDICIARY IN SOUTH AFRICA

## MESSAGE FROM THE CHIEF JUSTICE

Message from Chief Justice Mogoeng Mogoeng, Chief Justice of the Republic of South Africa and Vice-President of the CCJA



**Mogoeng Mogoeng**  
Chief Justice of the Republic of South Africa  
Vice-President: CCJA

1. The Fourth Congress of the Conference of Constitutional Jurisdictions of Africa takes place in Cape Town from 23 to 26 April 2017. The South African Judiciary considers it a privilege and honour to host this Congress on South African soil. On behalf of the Judiciary of South Africa I welcome all our Colleagues in the Judiciary from throughout the length and breadth of our continent. A special word of welcome goes to all the speakers who accepted invitations to speak at this Congress. A number of them come from outside of our continent and we are grateful that they have taken their time to be with us.

2. It is appropriate that we tell you something about the South African Judiciary. We do that in the next few pages. The South African Judiciary enjoys a high degree of independence from the Legislative and Executive arms of government. Nevertheless, it has not reached the acceptable level of institutional independence. We continue to work hard towards the attainment of that objective.

3. In terms of our Constitution the judicial authority of the Republic is vested in the courts. The Constitution makes it clear that courts are independent and subject only to the Constitution and the law which they must apply impartially and without fear, favour or prejudice. I am able to say, without any fear of contradiction, that the South African Judiciary is subject only to the Constitution and the law and applies the Constitution and the law impartially and without fear, favour or prejudice. Indeed, since the dawn of democracy our Judiciary has established a very good reputation as a Judiciary that promotes the Rule of law and jealously guards its (judicial) independence.

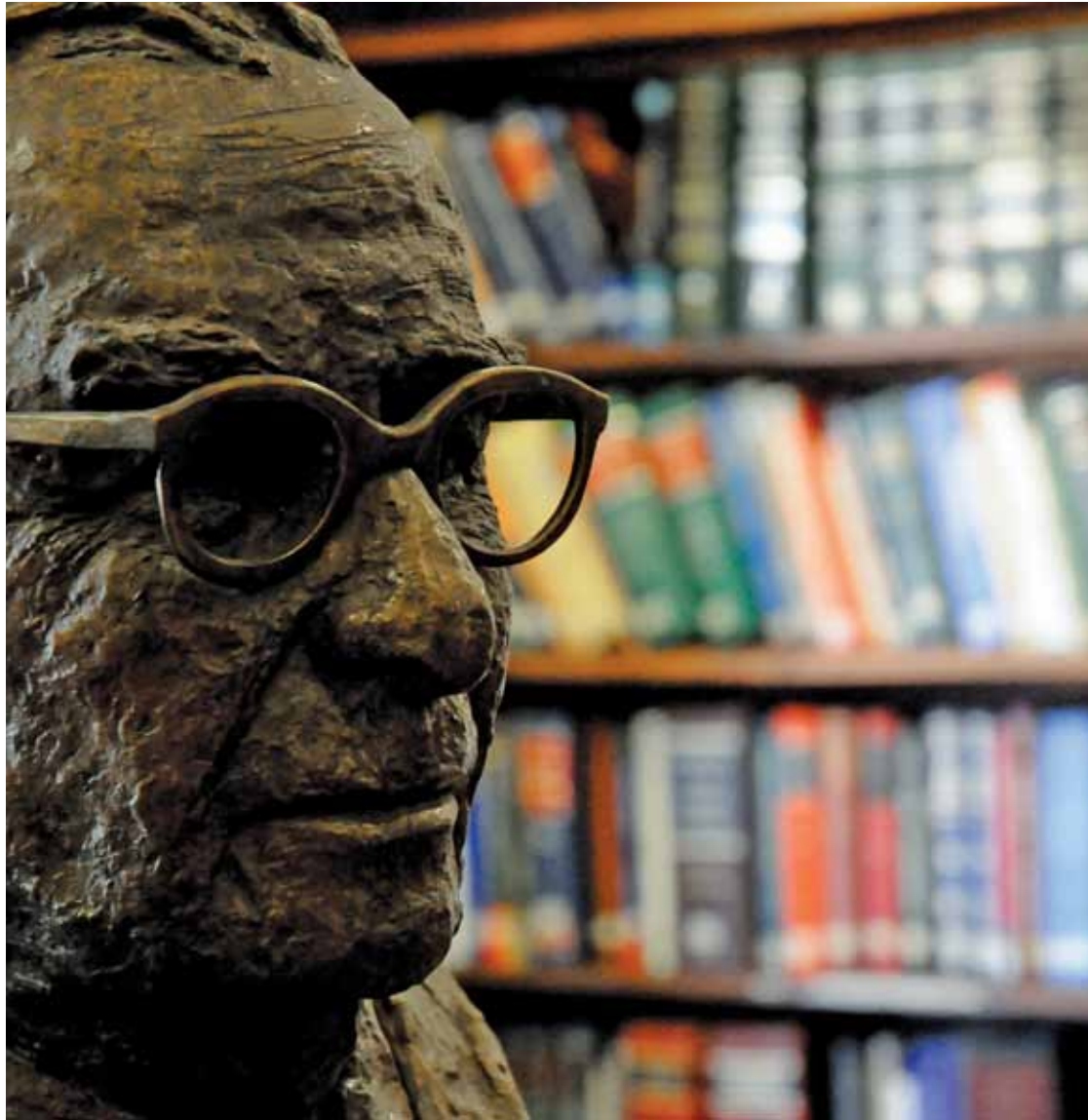
4. I hope you will find the next few pages on the South African Judiciary instructive and informative. We also hope you will enjoy your stay in our Country. And we undertake to do all in our power to make your stay an enjoyable and a memorable one. Hopefully, the Fourth Congress will be a great success and that, after the Congress, you will travel safely back home. Welcome to the Congress.

**Mogoeng Mogoeng**

Chief Justice of the Republic of South Africa  
Vice-President: CCJA











## THE JUDICIARY IN SOUTH AFRICA

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Before the dawn of democracy in South Africa, the judicial system functioned as part of the apartheid legal order and was perceived to contribute to legitimising this order. The Westminster system of government, in which the Legislature was supreme over the other branches of government, resulted in the Judiciary upholding and sustaining the discriminatory and unjust laws. The courts were only confined to interpreting and enforcing legislation. They could not consider and determine the substantive legality of Acts of Parliament.

The year 1993 was a defining moment in South Africa's history. This led to the change of political landscape through a multi-party negotiated settlement which culminated in South Africa becoming a constitutional democratic state. South Africa adopted an Interim Constitution in terms of which the country moved from the Westminster system of government to a sovereign, constitutional democratic state founded on the values of human dignity, equality, advancement of human rights, non-racialism, non-sexism, the rule of law and supremacy of the Constitution. In 1994, for the first time South Africa held a general election in which all adult citizens irrespective of race had a right to vote and South Africa had its first democratically elected President. The final Constitution was drafted by a Constitutional Assembly comprising elected representatives of the South African population in 1994. This Constitution went through a thorough consultative process culminating in its certification by the Constitutional Court until its adoption by Parliament in 1996. It entrenched a democratic State founded on the values of constitutional supremacy, equality and rule of law, amongst others.

The relevant provision relating to the Judiciary is section 165 of the Constitution. Section 165 vests the judicial authority to the courts and provides for an independent and transformed Judiciary that delivers quality justice to all without fear, favour or prejudice. These courts are subject only to the Constitution and the law, which they must apply impartially. This is a crucial provision of our post-apartheid Constitution which protects our constitutional democracy. Section 165 further provides that no person or organ of state may interfere with the functioning of the courts and enjoins organs of state, through legislative and other measures, to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.

The Constitution also outlines its vision as the need to establish a judicial system suited to the requirements of the new Constitution.





It is to this end that the President of South Africa established the Office of the Chief Justice (OCJ) as a National Department, responsible for rendering support to the Judiciary and the Chief Justice as Head of the Judiciary. This is a commendable step by the South African Government. It fulfils the transformative imperatives demanded by the Constitution in a path towards a Judiciary-led court administration system in recognition of the need to enhance judicial independence as espoused in section 165 of our Constitution. The final goal of the Judiciary is the creation of a revitalised court administration structure located within the judicial branch of government. In this regard, the Judiciary conducted research and submitted its preferred Judiciary-led court administration model to the Executive in 2013 to enable legislation to be enacted which will ensure that the institutional independence of the judiciary is realised.

In an effort to enable the Judiciary to manage the Superior Courts, the Executive branch of government transferred the administrative functions and staff of the Superior Courts from the Department of Justice and Constitutional Development to the OCJ in 2014. The transfer of administrative functions and resources of the Lower Courts is in the pipeline and will follow in due course.

The Constitution of South Africa assigns the responsibility of establishing and monitoring norms and standards for Judicial Officers to the Chief Justice as the Head of the Judiciary. To this end, we have gazetted the norms and standards for Judicial Officers in order to enhance optimal and effective performance by our courts. We have already seen some positive developments since the implementation of the norms and standards. The norms and standards underscore our understanding that judicial independence and judicial accountability are intrinsically intertwined. It is also because of this reason that as from January 2014, Judges have been required in terms of legislation to disclose their financial interests in order to eliminate any perception of conflict of interests that might have an impact on our judicial independence.

We are also mindful of the fact that continuing education and training of Judicial Officers is necessary for the better performance of judicial officers. In the training of judicial officers much emphasis is placed upon the importance of judicial independence and accountability. In this regard, the South African Judicial Education

Institute which falls under the OCJ, continues to offer training courses to Judicial Officers, newly appointed Judicial Officers and aspiring Judicial Officers.

We have, through the Judicial Service Commission made great strides in the quest to transform the South African Judiciary in compliance with the constitutional injunction in section 174 of our Constitution which requires that we consider the racial and gender composition when we make recommendations for judicial appointments. It is pleasing to say that today, the overwhelming majority of the Heads of Courts of the Superior Courts is Black. We are also making serious progress in ensuring that women are properly represented in the Judiciary.

Modernising the courts to make them better able to serve the needs of citizens and enhance access to justice is another matter the Judiciary is dealing with. One of the major contributors to court efficiency and effectiveness is court modernisation and automation. The implementation of initiatives like electronic filing and electronic record keeping on- and off-site facilitates the efficient management of cases and their speedy finalisation and ensures that the disappearance of records of proceedings, which often result in grave injustice to the affected parties sometimes even the general public, becomes something of the past. These are some of the projects that the Judiciary, with the support of the OCJ, has identified and is undertaking.

All of these measures move us closer towards the achievement of a transformed and independent judiciary that promotes the rule of law and access to justice for all in South Africa.

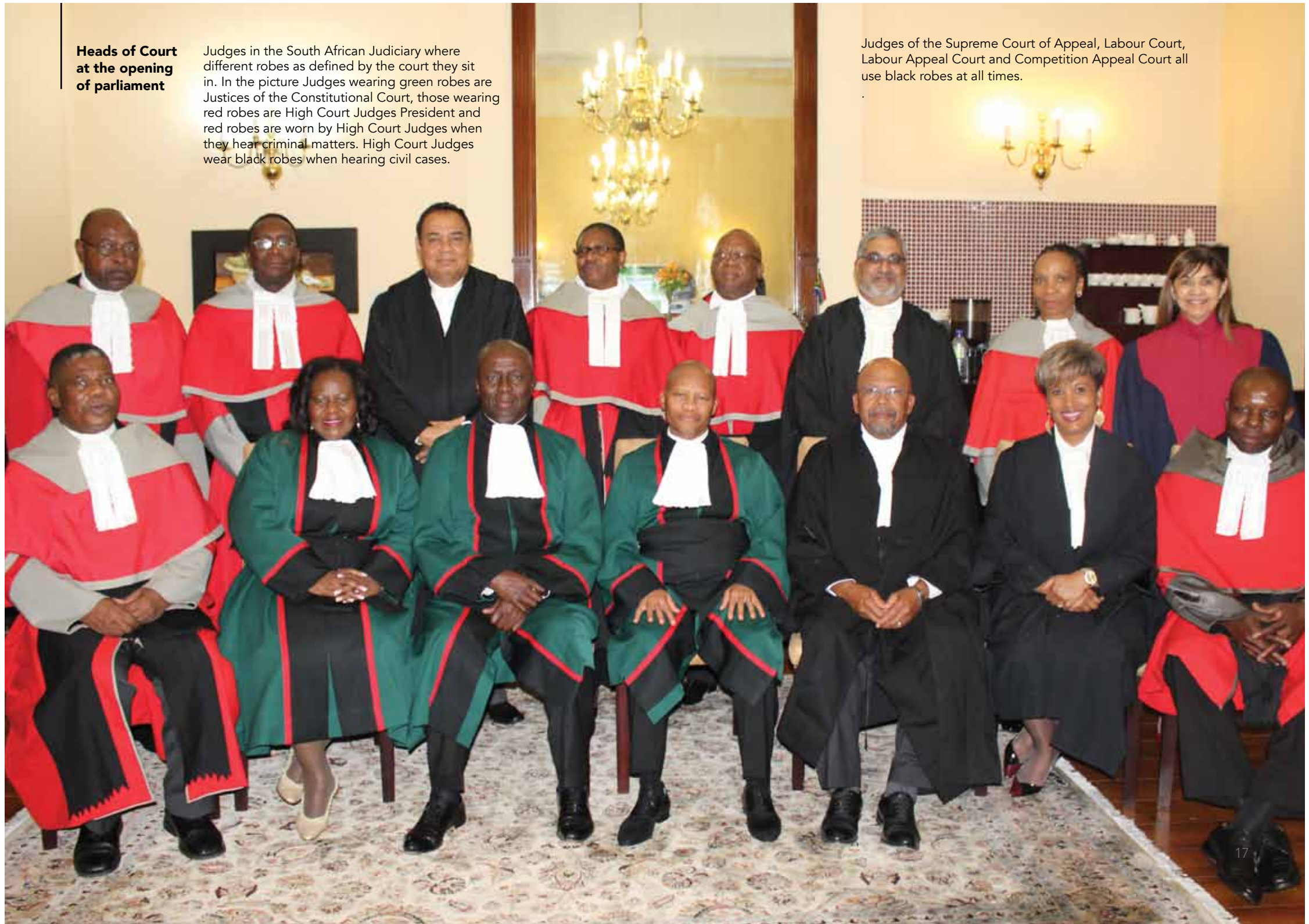




**Heads of Court  
at the opening  
of parliament**

Judges in the South African Judiciary wear different robes as defined by the court they sit in. In the picture Judges wearing green robes are Justices of the Constitutional Court, those wearing red robes are High Court Judges President and red robes are worn by High Court Judges when they hear criminal matters. High Court Judges wear black robes when hearing civil cases.

Judges of the Supreme Court of Appeal, Labour Court, Labour Appeal Court and Competition Appeal Court all use black robes at all times.







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1. Judge President T Sangoni - Eastern Cape Division of the High Court
2. Judge President M Molemela - Free State Division of the High Court
3. Judge President Dunstan Mlambo - Gauteng Division of the High Court
4. Judge President A Jappie - KwaZulu-Natal Division of the High Court
5. Judge President F Kgomo - Northern Cape Division of the High Court
6. Judge President Monica Leeuw - North West Division of the High Court
7. Judge President John Hlophe - Western Cape Division of the High Court
8. Judge President Ephraim Makgoba - Limpopo Division of the High Court
9. Judge President Dennis Davis - Competition Appeals Court
10. Acting Judge President S Meer - Land Claims Court
11. Judge President J Shongwe - Electoral Court
12. Judge President B Waglay - The Labour Court



(Photo credit: Brand South Africa.)

Above: Constitutional Court of the Republic of South Africa is the highest court in South Africa, and was born of the country's first democratic Constitution in 1994.  
Below: Justice of the Constitutional Court of South Africa.









## THE SOUTH AFRICAN JUDICIAL SYSTEM





## 1. THE SOUTH AFRICAN JUDICIAL SYSTEM

In South Africa Judicial authority is constitutionally vested in the courts which are independent and subject only to the Constitution and the law which they must apply impartially and without fear, favour or prejudice.<sup>1</sup> The Constitution outlines the courts as follows:

- (a) The Constitutional Court;
  - (b) The Supreme Court of Appeal;
  - (c) The High Court of South Africa consisting of 9 (nine) divisions, and any high court of appeal that may be established by an Act of Parliament to hear appeals from any court of status similar to the High Court of South Africa;
  - (d) Specialist Courts which are, the Land Claims Court, Labour Court, Labour Appeal Court and Competition Appeal Court.
  - (e) Any other court established or recognized in terms of an Act of Parliament, including any court of a status similar to either the High Court of South Africa or the Magistrates' Courts and
  - (f) The Magistrates' Courts; .
- (a) The Constitutional Court

The Constitutional Court is the highest court in South Africa. It was established in 1994 in terms of South Africa's Interim Constitution. The Court is situated at Constitution Hill, Braamfontein, in Johannesburg. It comprises the Chief Justice, who is its Head, the Deputy Chief Justice and 9 (nine) other Judges. The Court may decide constitutional matters and any other matter if it grants leave to appeal on the grounds that the matter raises a constitutional issue or an arguable point of law of general public importance. The Court is the final arbiter of the constitutional validity of decisions taken by the President. It is the final Court that decides on the constitutional validity of laws made by Parliament and legislatures. Generally, the Court sits as an appeal court but, in certain limited circumstances, it may sit as a court of first and final instance. Any matter before this Court must be heard by at least eight Judges.

<sup>1</sup> Section 165 of the Constitution.





## 1. THE SOUTH AFRICAN JUDICIAL SYSTEM



### (b) The Supreme Court of Appeal

The Supreme Court of Appeal (SCA) is the successor to the Appellate Division of the Supreme Court of South Africa, first established in 1910. The name of the Court was changed by the 1996 Constitution. The SCA comprises the President, Deputy President and so many Judges of appeal as may be determined by an Act of Parliament. This Court functions only as a court of appeal. It decides appeals from the High Court or Land Claims Court or Electoral Court. While it previously had jurisdiction in labour and competition matters, it no longer has such jurisdiction now. From the Labour Appeal Court and Competition Appeal Court, appeals in labour and competition matters go to the Constitutional Court.

### (c) The High Court of South Africa

The High Court of South Africa consists of as many Divisions as may be determined by an Act of Parliament.<sup>2</sup> Each Division consists of a Judge President, one or more Deputy Judges - President and as many other Judges determined in terms of national legislation. The High Court of South Africa has inherent jurisdiction to hear any case that is not assigned to another court by an Act of Parliament. Each Division of the High Court has jurisdiction in its own area over all persons residing or present in that area. It has the power to declare legislation constitutionally invalid but its order is subject to confirmation by the Constitutional Court.

Courts of a status similar to that of the High Court are the following specialised Courts:

- (a) Electoral Court, which adjudicates electoral disputes;
- (b) Labour Court, which adjudicates certain labour disputes;
- (c) Labour Appeal Court, which hears appeals from the Labour Court;
- (d) Competition Appeal Court, which deals with appeals from the Competition Tribunal; and

<sup>2</sup> Section 6 of the Superior Courts Act, 2013 (Act No. 10 of 2013), provides for divisions of the High Court of South Africa.







## 1. THE SOUTH AFRICAN JUDICIAL SYSTEM



(e) Land Claims Court, which deals with matters on the restitution of land rights that people lost as a result of racially discriminatory land laws.

### (d) Magistrates' Courts

These are Regional and District Magistrates' Courts and together they comprise the so-called lower courts. These Courts are a vital part of the legal system as it is where ordinary people come into contact with the justice system daily. Magistrates are appointed by the Minister of Justice and Correctional Services on recommendations of the Magistrates' Commission.

Regional Magistrates' Courts deal with more serious cases than the ordinary (District Courts) Magistrates' Courts such as murder, rape, armed robbery and serious assault. They can sentence a person convicted of murder or rape to life imprisonment. A Regional Magistrates' Court can impose a maximum fine of R300 000. They also have civil jurisdiction to the extent that they can hear divorce matters.

The District Courts deal with less serious cases. Unlike the Regional Courts, they cannot try cases of murder, treason, rape, terrorism, or sabotage. They can sentence a convicted person to a maximum period of 3 years in prison or a maximum fine of R100 000.





## JUDICIAL APPOINTMENTS





## 2. JUDICIAL APPOINTMENTS



Before the dawn of democracy in South Africa, Judges were appointed by the President in consultation with the Minister of Justice applying a criterion that was not known to the legal fraternity and the public. In order to bring about a credible and transparent process in the appointment of Judges in South Africa, the Constitution provides for the establishment of the Judicial Service Commission (JSC).<sup>3</sup>

The JSC, which is chaired by the Chief Justice, consists of a certain number of senior Judges, members of Parliament representing political parties, members of professional bodies and nominees of the President.

The JSC interviews and recommends candidates to the President for appointment. In fulfilling its mandate, the JSC has to ensure that candidates to be recommended are fit and proper for judicial office and that the Judiciary reflects broadly the racial and gender composition of South Africa<sup>4</sup> in order to redress the imbalances of the past apartheid South Africa within the Judiciary.

The other functions of the JSC include dealing with complaints brought against Judges; managing the Registrar of Judge's Registrable interests; and advising national government on matters relating to the Judiciary.

Other Judicial officers other than Judges must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.<sup>5</sup> It is for this reason that Parliament passed the Magistrate's Act 90 of 1993. This Act established the Magistrate's Commission to, amongst others, advise the Minister of Justice and Correctional Services regarding the appointment of Magistrates; advise the said Minister regarding any matter which is of interest for the independence of the Magistrates' Courts in dispensing justice efficiently; and make recommendations to the Minister regarding the suspension and removal of Magistrates from office.

<sup>3</sup> The composition of the JSC is provided for in section 178 of the Constitution, 1996.

<sup>4</sup> Section 174 of the Constitution.

<sup>5</sup> Section 174(7) of the Constitution.





## JUDICIAL TRAINING





### 3. JUDICIAL TRAINING

The South African Judicial Education Institute (SAJEI) was established in terms of the South African Judicial Institute Act 14 of 2008 in order to:

- (a) provide proper, appropriate and transformational judicial education and training, having due regard to both our inherited legacy and our new constitutional dispensation; and
- (b) offer judicial education and training to aspiring and newly appointed Judicial Officers as well as continuing training for Judicial Officers.

SAJEI is led by a Council consisting of 24 members who are largely from the Judiciary. Other stakeholders such as Advocates, Attorneys, Academics as well as Traditional Leaders form part of the Council. The Chairperson of the Council is the Chief Justice.

The curriculum of SAJEI for aspirant and newly appointed Judicial Officers is designed to pay special attention to areas like judgment writing, civil and criminal trial management and motion court management, ethics, constitutional litigation, etc. All these areas equip Judicial Officers with knowledge and skills to carry out their duties efficiently and effectively. SAJEI also has a programme for a wide range of soft skills for Judicial Officers.





## **NATIONAL EFFICIENCY ENHANCEMENT COMMITTEE**





#### 4. NATIONAL EFFICIENCY ENHANCEMENT COMMITTEE

On 13 October 2012, the Judiciary initiated the establishment of the National Efficiency Enhancement Committee (NEEC). It comprises the Chief Justice, President of the Supreme Court of Appeal, Judge President of the Gauteng Division of the High Court, the Judge President of the Northern Cape High Court, a Judge representing the Judicial Case Management Committee, Regional Court Presidents, National Commissioners of South African Police Services and Correctional Services, Directors-General of the Department of Public Works, Justice, Health, Social Development, the the Chairperson and Chief Executive Officer of Legal Aid South Africa, the Chief Executive Officer of the Road Accident Fund, the National Director of Public Prosecutions, Chief Magistrates, representatives of the Law Society of South Africa and the General Council of the Bar. The NEEC is chaired by the Chief Justice. The primary objective of the NEEC is to ensure efficiency and effectiveness of the courts. The Committee identifies challenges that undermine efficiency and employ its collective wisdom behind closed doors, to find solutions, without compromising the Constitution and the law.

At its meeting held on 4 October 2013, the NEEC decided to establish Provincial Efficiency Enhancement Committees (PEEC's). These were launched in November and December 2013. The provincial committees are mandated to enhance access to justice by ensuring, among others:

- Cooperation and commitment of all relevant stakeholders in the efficient and effective adjudication of disputes in the Courts;
- The proper implementation of norms and standards; and that
- The case flow management pilot project is properly understood and supported.





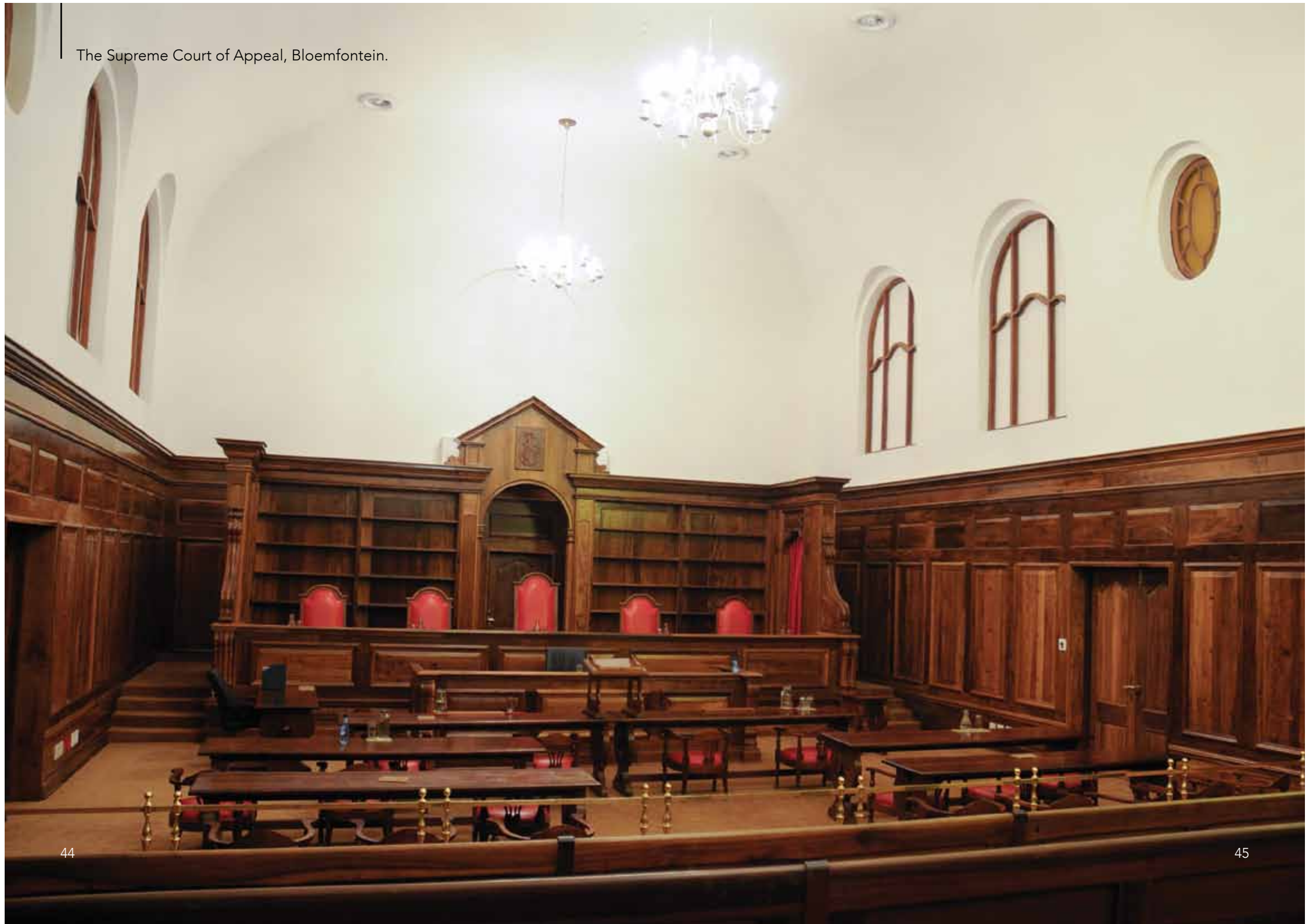
#### 4. NATIONAL EFFICIENCY ENHANCEMENT COMMITTEE

The Heads of Courts are required to report the progress of the PEEC's to the Chief Justice. Through the NEEC, the Judiciary has fostered an integrated approach to address issues that undermine the individual and collective performance which is of great benefit to our people and strengthens our constitutional democracy.





The Supreme Court of Appeal, Bloemfontein.



Western Cape Division of  
the High Court, Cape Town.







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