



Press statement

12 March 2026

Statement by Defend Our Democracy on the TRC Prosecutions Commission

The position adopted by President Cyril Ramaphosa in the ongoing High Court proceedings concerning the application by former presidents Jacob Zuma and Thabo Mbeki for the recusal of Justice Sisi Khampepe from the commission investigating the failure to prosecute cases arising from the Truth and Reconciliation Commission (TRC) raises serious constitutional concerns. DOD maintains that it should trouble all South Africans.

By his own account, the President authorised the Minister of Justice to approach Justice Khampepe and request that she consider stepping down as chair of the Commission. That approach was improper. Once a judge has been appointed to chair a commission of inquiry, the executive is required to respect the independence of that office. Any attempt by the executive to induce a judge to resign because the work of a commission has become politically contentious is inconsistent with the constitutional principle of judicial independence.

Equally troubling is the stance the President has adopted in the litigation itself. Rather than defending the integrity of the Commission he established, the President now indicates that he not only does not oppose the removal of its chair but seemingly encourages it. In doing so, he effectively aligns the Presidency with an effort by former presidents to halt or derail an inquiry tasked with examining whether successive administrations interfered with the prosecution of apartheid-era crimes.

The Commission's work is already far advanced. It has held several weeks of hearings and expended substantial public resources in investigating matters of profound constitutional importance: whether the democratic state failed to pursue accountability for serious crimes identified by the TRC. To facilitate the collapse of the Commission at this stage would not only undermine the independence of this process but would also inflict further delay on families who have waited decades for truth and accountability.

The terms of the TRC were always that prosecutions and real accountability would result and be integral parts of its process. This was so that justice might be offered to individual victims and survivors but also so that rule of law might be shown to be foundational to our nascent constitutional democracy. That prosecutions have not resulted, as envisaged, has been a profound wound. The Commission represents one of the last remaining mechanisms through which the truth about the suppression of these prosecutions might be established.

It should be unthinkable that the executive would now place that process in jeopardy.



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For media inquiries, contact:

Andries Sibanyoni

Communication Officer

Defend Our Democracy

Mobile: 071 037 6138