

JOINT STATEMENT BY CIVIL SOCIETY ORGANISATIONS ON DELAYS IN CONSTITUTIONAL COURT APPOINTMENTS

For immediate release



Civil society organisations committed to the protection of the rule of law and the integrity of South Africa’s constitutional democracy express deep concern at President Cyril Ramaphosa’s delay in appointing judges to the Constitutional Court.

It has now been over five months since the Judicial Service Commission (JSC) concluded interviews and submitted its recommendations for appointment of two judges to the Constitutional Court. To our knowledge, this is longest any president in democratic South Africa has taken to appoint judges to the apex court.

The Constitutional Court has not operated at a full complement of 11 permanent judges for several years. The current delay exacerbates the problem.

A constitutional obligation to act timeously

Section 174(4) of the Constitution requires the President to appoint judges to the Constitutional Court from a list provided by the JSC, after consultation with the Chief Justice and political party leaders in Parliament. While this provision affords the President a measure of discretion, and requires consultation, it does not permit indefinite delay.

The power to appoint judges is a constitutional duty, not a political option. It must be exercised diligently and without undue delay, consistent with section 237 of the Constitution and its foundational values, including the rule of law and the effective functioning of courts.

The President's failure to make these appointments timeously undermines both the independence and the operational capacity of the judiciary.

Prolonged reliance on Acting Judges a serious concern

The continued use of Acting Judges to fill long-standing vacancies raises serious constitutional and practical concerns.

Acting judges, who may be perceived as seeking permanent appointment, occupy a position of relative insecurity compared to permanent members of the Court. Prolonged reliance on such appointments risks creating the perception that adjudication may be influenced—consciously or otherwise—by prospects of future elevation. It also concentrates significant power in the hands of the President, the Minister of Justice, and the Chief Justice, who are involved in acting appointments, without the safeguards of the more transparent and rigorous process that governs permanent judicial appointments.

The Constitutional Court's jurisprudence also depends on sustained deliberation among a stable bench. Frequent turnover in acting appointments undermines continuity, coherence, and the development of shared judicial reasoning. Moreover, as recent research has shown, the Court's reduced permanent capacity correlates with slower judgment delivery. Acting judges cannot fully substitute for a stable complement of permanent members of the Court.

An untenable situation

The delay in appointing judges to the court must be understood against a concerning broader trend: the Constitutional Court has faced persistent vacancies since at least 2016, largely due to predictable retirements that should have been proactively managed.

The present inaction therefore represents not an isolated lapse, but part of a systemic failure to ensure the Court operates at full strength.

Call to action

We call on the President to:

1. Make the outstanding Constitutional Court appointments without further delay;
2. Publicly explain the reasons for the delay;
3. Commit to ensuring that future judicial appointments are made timeously and transparently, in line with constitutional obligations.

We further call for broader institutional reforms to ensure that vacancies in the apex court are anticipated and filled proactively, including improved coordination between the Presidency and the Judicial Service Commission.

Conclusion

The Constitutional Court is the final guardian of the Constitution. Its ability to perform this role depends on a full, stable, and independent bench.

Delays in judicial appointments are not administratively neutral; they have real consequences for access to justice, the development of the law, and public confidence in the judiciary.

The current situation is untenable. Immediate action is required.

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