

**Press
Release
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South African Institute of Race Relations
The power of ideas

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EWC timetable makes a mockery of constitutional commitment to public participation – IRR

The Ad Hoc Committee to Initiate and Introduce Legislation Amending Section 25 of the Constitution has set out its proposed timetable for the drafting of this constitutional amendment bill. It plans to give the public a scant four weeks – carefully timed to coincide with the December holidays – to comment on the bill.

These proposals are set out in a press release put out by the Committee’s media officer on Sunday 27 October.

The Committee plans to hold a two-day workshop on 6 and 7 November with ‘experts’ on land and constitutional matters. The aim of the workshop is to have “a constitutional dialogue on land ownership”.

The Committee then proposes to draw up a draft bill by 27 November and will then arrange several sessions “for [its] deliberation by Members of Parliament”.

However, as Democratic Alliance MP Natasha Mazzone points out, given the great importance of this constitutional amendment, it is vital that MPs have more than four days to discuss the draft bill.

The Committee is nevertheless determined to have the draft Bill published on 10 December 2019 (this, ironically, being international Human Rights Day). The call for public comment is “expected to end on 27 January 2020”.

Public hearings will then be held in February, so that the Committee can have the bill ready for adoption by Parliament by the end of March 2020 (the deadline it was given earlier this year).

A common sleight of hand on the part of the ANC is to give the public the opportunity to comment on a controversial bill over the December holidays. Sure enough, the Committee plans to give people from 10 December 2019 to 27 January 2020 to comment on the draft bill.

Public school holidays start on 5 December 2019 and end on 14 January 2020. It hardly needs saying that the December holidays are when most people are away and almost everything shuts down.

This proposed timetable makes a mockery of the constitutional requirement to “facilitate public involvement” in the Committee’s work. It also disregards a number of Constitutional Court rulings on what proper public participation requires.

According to the court, citizens must be given “a meaningful opportunity to be heard in the making of laws that will govern them”. They must also be given “a reasonable opportunity to know about the issues and to have an adequate say”. Enough time must therefore be allowed for the public consultation process – and “a truncated timeline” may itself be “inherently unreasonable”.

What the Committee has proposed is clearly unconstitutional. The IRR therefore calls on it to ensure that its call for public comment fully complies with the criteria laid down by the Constitutional Court.

This is all the more important given the gravity of what is at stake in a constitutional amendment bill intended to curtail the guaranteed property rights of all South Africans.

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