

Press Release

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South African Institute of Race Relations
The power of ideas

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Parliament pushing a deeply flawed bill through a deeply flawed process

A new bill which aims at re-opening the land claims process for five years is just as flawed as the similar 2014 Act that was struck down by the Constitutional Court in July 2016, says the Institute of Race Relations (IRR).

Parliament has failed to resolve the key defects which the Constitutional Court gave it two years – and a deadline of 27 July 2018 – to fix. Instead, it is trying to beat that deadline by ignoring the court's instructions and pushing a deeply flawed bill through a deeply flawed process.

In 2014 the government decided to re-open the land claims process for five years, even though thousands of land claims lodged before the initial cut-off date (December 1998) were still outstanding, some 70% of restored farms had collapsed, and resolving new claims was likely to cost R180bn and take more than 200 years to complete. People who had met the 1998 deadline were also worried that their claims would be overtaken by new ones.

In July 2016 the Constitutional Court struck down the Restitution of Land Rights Amendment Act of 2014, which had already re-opened the land claims process for five years (from July 2014 to July 2019). It did so primarily because Parliament had rushed the Act's adoption and failed to consult the public properly. The statute was also too vague on how competing 'old' and 'new' claims were to be resolved, the court added. It gave Parliament until 27 July 2018 to fix these flaws and re-enact the legislation.

Says IRR Head of Policy Research Dr Anthea Jeffery: 'This deadline is fast approaching. Parliament is thus scrambling to hold public hearings in all nine provinces on a replacement bill – the Restitution of Land Rights Amendment Bill of 2017 (the 2017 Bill) – so that this measure can be pushed through the legislature in the limited time remaining.

'According to the Constitutional Court, the public must be given at least seven days' notice of public hearings on any bill. People must also have a 'meaningful' opportunity to 'study' a bill and to 'influence' the decisions to be taken. But Parliament is ignoring these constitutional obligations in its rush to adopt the 2017 Bill.

'From the limited information available, it seems that only one or two days' notice of public hearings is being given. No information about the 2017 Bill and its likely costs and ramifications is being provided. Not even Agri SA, which has an understandably keen interest in the re-opening of land claims, has been informed of provincial hearings already conducted or still to be held. If Agri SA has so little knowledge of what is being done, Parliament can be sure that most members of the public know very much less.'

Jeffery adds: 'The 2014 statute was struck down because of a lack of proper public consultation. Yet precisely the same procedural defect is evident once again. In addition, the 2017 Bill is still vague as to how competing "old" and "new" claims are to be resolved, despite the Constitutional Court having flagged this as a vital issue for the legislature to address.'

Effectively, Parliament is ignoring the Constitutional Court's July 2016 judgment. It is also overlooking the clear requirements of the Constitution, as set out in that judgment and many other rulings.

'It cannot simply ignore the court's judgment because of its own failure to act within the stipulated two-year period,' Jeffery argues.

In a letter sent yesterday to parliamentary officials objecting to 'procedural and substantive flaws as regards the Restitution of Land Rights Amendment Bill of 2017', Jeffery wrote: 'Instead of trying to rush a deeply flawed measure through a deeply flawed public participation process, Parliament should acknowledge that it has missed the deadline set by the Constitutional Court. As that court instructed, the Chief Land Claims Commissioner should now approach the court for an appropriate order as to how the 75 000 to 80 000 new claims which had already been lodged under the 2014 Act before it was struck down in July 2016, should be processed.'

Read the IRR's full submission to Parliament [here](#).

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