

REPUBLIC OF SOUTH AFRICA

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# **AFRICA INSTITUTE OF SOUTH AFRICA ACT REPEAL BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 36239 of 13 March 2013)  
(The English text is the official text of the Bill)*

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(MINISTER OF SCIENCE AND TECHNOLOGY)

**[B 6—2013]**

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# BILL

**To provide for the disestablishment of the Africa Institute of South Africa; to provide for the transfer of the assets, liabilities, rights and obligations of the Institute; to repeal the Africa Institute of South Africa Act, 2001; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. In this Act, unless the context otherwise indicates—

“**Council**” means the Human Sciences Research Council established by section 2 of the repealed Human Sciences Research Council Act, 1968 (Act No. 23 of 1968), and retained by section 2 of the Human Sciences Research Council Act, 2008 (Act No. 17 of 2008);

“**Institute**” means the Africa Institute of South Africa established by section 2 of the Africa Institute of South Africa Act, 2001 (Act No. 68 of 2001); and

“**Minister**” means the Minister responsible for science and technology.

## Disestablishment of Institute

2. The Institute is hereby disestablished.

## Transitional measures, savings, dissolution of Council of Institute and funding

3. (1) The Minister must stipulate, by notice in the *Gazette*, the date on which all assets, liabilities, rights and obligations of the Institute are transferred to the Council.

(2) On the date contemplated in subsection (1)—

- (a) all assets, liabilities, rights and obligations of the Institute are transferred to the Council, which acquires all such assets, liabilities, rights and obligations;
- (b) the Council becomes the owner of all movable and immovable property owned by the Institute without formal transfer, except in the case of immovable property, and without payment of any fees, other monies or costs;
- (c) the Council is substituted as litigating party for the Institute in all pending litigation, including arbitrations, labour disputes and mediations, as if the Council had been a litigant at the time the cause of action arose;
- (d) the Council is substituted as contracting party for the Institute in all contracts, as if the Council had been a contracting party at the time of contracting; and
- (e) all financial instruments of the Institute existing prior to that date are deemed to have been issued by the Council.

(3) The Minister must stipulate, by notice in the *Gazette*, the date on which all employees of the Institute are transferred to the Council.

(4) (a) On the date contemplated in subsection (3) all employees of the Institute are transferred to the Council in accordance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(b) From the said date all those employees are employed by the Council on the same terms and conditions of employment, including remuneration and other benefits, as those which applied to such employees' previous employment with the Institute.

(5) The Council of the Institute, established by section 4(1) of the Africa Institute of South Africa Act, 2001 (Act No. 68 of 2001), is disestablished and dissolved, with effect 5  
from the date contemplated in section 5.

(6) The Institute's parliamentary budget allocation must be exclusively reserved for the Institute's operational activities within the Council, for a period of three financial years from the date referred to in section 5.

#### **Repeal of Act 68 of 2001** 10

4. The Africa Institute of South Africa Act, 2001 (Act No. 68 of 2001), is hereby repealed.

#### **Short title and commencement**

5. This Act is called the Africa Institute of South Africa Act Repeal Act, 2013, and comes into operation on a date fixed by the President by notice in the *Gazette*. 15

## **MEMORANDUM ON THE OBJECTS OF THE AFRICA INSTITUTE OF SOUTH AFRICA ACT REPEAL BILL, 2013**

### **1. BACKGROUND**

- 1.1 The Africa Institute of South Africa Act Repeal Bill, 2013 (hereinafter referred to as “the Bill”), seeks to repeal the Africa Institute of South Africa Act, 2001 (Act No. 68 of 2001) (hereinafter referred to as “the Act”), which established the Africa Institute of South Africa (hereinafter referred to as “the Institute”).
- 1.2 When the Department of Science and Technology (hereinafter referred to as “the Department”) was established in 2004, the responsibility for the administration of the Act was assigned to the Minister of Science and Technology (hereinafter referred to as “the Minister”), presumably because the Institute was regarded as a research institute intended to generate and disseminate knowledge, albeit with an Africa focus.
- 1.3 Prompted by the recommendations of the Institute’s 2010 institutional review, the Minister requested the Department to consider the alignment of the Institute’s role and activities within the Department’s broad strategic mandate. It was discovered that there was a significant overlap between the mandate and operational activities of the Institute and the Human Sciences Research Council (hereinafter referred to as “the Council”), which the Department believes causes or has the potential of causing unnecessary duplication of activities, resulting in inefficient deployment of resources.
- 1.4 During 2008 the mandate of the Council was expanded to include a strong focus on public purpose research and stressed effective engagement with Africa and the rest of the world.
- 1.5 The Department therefore considered the possibility of merging the two institutions, due to the significant alignment in the research focus and activities of both entities. It was however advised that due to the relative sizes of the respective institutions, it would be prudent to incorporate the Institute into the Council rather than to pursue a traditional merger approach. The Department also believes that the said incorporation will strengthen the Institute’s research capacity and enhance synergies in the two institutions’ research foci and activities. It was therefore deemed necessary to repeal the Act and incorporate the Institute into the Council.
- 1.6 In order to ensure funding certainty for the Institute’s current projects and other operational activities the Institute’s budget for the prevailing MTEF period will be ring-fenced within the Council.

### **2. OBJECTS OF THE BILL**

The Bill seeks to repeal the Act and consists of five clauses.

- 2.1 Clause 1 deals with the definitions of terms.
- 2.2 Clause 2 provides for the disestablishment of the Institute.
- 2.3 Clause 3 provides for the—
  - 2.3.1 transitional arrangements in respect of the transfer of assets, liabilities, rights and obligations of the Institute as well as the transfer of employees from the Institute to the Council;
  - 2.3.2 dissolution of the Council of the Institute; and
  - 2.3.3 ring-fencing of the Institute’s budget within the Council.

2.4 Clause 4 seeks to repeal the Act.

2.5 Clause 5 contains the short title, and deals with the commencement of the Act.

### **3. PARTIES CONSULTED**

The following departments and bodies were consulted:

3.1 Africa Institute of South Africa

3.2 Human Sciences Research Council

3.3 National Treasury

### **4. FINANCIAL IMPLICATIONS FOR THE STATE**

All expenses for specialised services relating to the incorporation process have been budgeted for by the Department. Operational management and oversight relating to such incorporation will, as far as possible, be undertaken by members of the senior management of the Department, the Institute and the Council.

### **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the Department of Science and Technology are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution, since it does not contain provisions to which section 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.