

**NOTICE 674 OF 2012****DEPARTMENT OF SCIENCE AND TECHNOLOGY****AFRICA INSTITUTE OF SOUTH AFRICA ACT REPEAL BILL**

I, Grace Naledi Mandisa Pandor, Minister of Science and Technology, hereby publish the Africa Institute of South Africa Act Repeal Bill, for public comments.

Members of the public and interested parties are invited to submit written comments on this Bill within 30 days from the date of publication of this Notice, to:

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Private Bag X894

Pretoria, 0001

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Attention: Brian Muthwa



**GNM Pandor, MP**

**Minister Science and Technology**

# BILL

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

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**“Council”** means the Human Sciences Research Council established by section 2 of the repealed Human Sciences Research Council Act, 1968 (Act No. 23 of 1968), and retained by section 2 of the Human Sciences Research Council Act, 2008 (Act No. 17 of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

**“Minister”** means the Cabinet Member responsible for Science and Technology.

## Disestablishment of the Institute

2. The Institute is hereby disestablished.

## Transitional measures

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

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- (2) All assets, liabilities, rights and obligations of the Institute will, from the date referred to in subsection (1), be transferred to the Council, which will acquire all such assets, liabilities, rights and obligations.
- (3) Without derogating from the generality of subsection (1) -
- (a) the Council will become the owner of all movable and immovable property owned by the Institute prior to the date referred to in subsection (1) without formal transfer, except in the case of immovable property, and without payment of any fees, duties, taxes and other charges;
  - (b) the Council will be substituted as litigating party for the Institute on the date referred to in subsection (1) in all pending litigation, including arbitration, labour disputes and mediation, as if the Council had been a litigant at the time the cause of action arose;
  - (c) the Council will be substituted as contracting party for the Institute on the date referred to in subsection (1) in all contracts, as if the Council had been a contracting party at the time of contracting; and
  - (d) all financial instruments of the Institute existing prior to the date referred to in subsection (1) will be deemed to have been issued by the Council.
- (4) The Minister will stipulate, by notice in the *Government Gazette*, the date from which all permanent employees of the Institute will be transferred to the Council.
- (5) All permanent employees of the Institute will, from the date referred to in subsection (4), and in accordance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), be deemed to be 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.
- (6) The Council of the Institute, established by section 4(1) of the Africa Institute of South Africa Act, 2001 (Act No. 68 of 2001), will be deemed to have been disestablished and dissolved, with effect from the date referred to in section 5.
- (7) The Institute's parliamentary budget allocation will be exclusively reserved for the Institute's operational activities within the Council from the date referred to in section 5.

**Repeal of Act 68 of 2001**

4. The Africa Institute of South Africa Act, 2001, is hereby repealed.

**Short title and commencement**

5. This Act is called the Africa Institute of South Africa Act Repeal Act, 2012, and comes into operation on a date fixed by the President by notice in the *Government Gazette*.

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**MEMORANDUM ON THE OBJECTS OF THE AFRICA INSTITUTE OF SOUTH AFRICA  
ACT REPEAL BILL, 2012**

**1. BACKGROUND**

- 1.1 The Bill seeks to repeal the Africa Institute of South Africa Act, 2001 (Act No. 68 of 2001) (the Act), which established the Africa Institute of South Africa (the Institute).
- 1.2 When the Department of Science & Technology (the Department) was established in 2004, the responsibility for the administration of the Act was assigned to the Minister of Science & Technology, presumably because AISA 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 (the Council), which the department believes causes or has the potential of causing unnecessary duplication of activities, resulting in inefficient deployment of resources and unhelpful competition between these two institutions.
- 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 reduce destructive competition, 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 The Department does not believe that there is a need to amend the Human Sciences Research Council Act, 2008 (Act No. 17 of 2008) to accommodate the incorporation of the Institute into the Council as the mandate of the Institute (i.e. the Africa focus) is already catered for in the said Act, and any existing function of the Institute which may not be centrally aligned to the objectives of the Council will be realigned to be consistent with such objectives where this enhances the performance of the Council, or discontinued over time where it does not.
- 1.7 In order to ensure funding certainty for the Institute's current projects and other operational activities, as well as the preservation of the identity of the Institute and retention of its brand after the incorporation, the Institute's budget will be ring-fenced within the HSRC.

## 2. OBJECTS OF THE BILL

The Bill seeks to repeal the Act and consists of four 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 into the Council;
  - 2.3.2 dissolution of the Council of the Institute; and
  - 2.3.3 ringfencing of the Institute's budget within the Council
- 2.4 **Clause 4** repeals the Act.
- 2.5 **Clause 5** deals with the commencement of the Act and contains the short title of the Bill.

### **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 Advisors 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 Advisors are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 189(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.