

DRAFT BILL

HUMAN SCIENCES RESEARCH COUNCIL BILL

Preamble

That the Republic of South Africa has been founded on the basis of human dignity, the achievement of equality and the advancement of human rights and freedoms, with the intention of improving the quality of life of all citizens and realising the potential of each person.

That the new South Africa must overcome the legacy of social disintegration and inequality left to it by the apartheid order, while coping with the social consequences of both poverty and disease and rapid economic and technological change under the impact of globalisation.

That the social sciences, like all branches of human knowledge and culture, need to enlist in the cause of human well-being and social justice.

That it is necessary to promote social science research of the highest quality in South Africa in order to improve public knowledge and understanding of social conditions and the processes of social change, particularly among the most vulnerable and marginalised.

That such knowledge and understanding should inform processes of public policy and implementation aimed at empowering people to find solutions to their problems and uplift the quality of their lives.

That the South African social science community is obliged to engage with their colleagues elsewhere in Africa through networks and joint

programmes of research on pressing social issues relevant to human welfare and prosperity.

That it is necessary for social scientists, in collaboration with other scientists and scholars, to analyse the social conditions arising from processes of globalisation and the challenges they present.

For these reasons it is necessary to establish a Human Sciences Research Council.

Definitions

1. In this Act, unless the context otherwise indicates -
 - (i) “Board” means the Board appointed in terms of section 5;
 - (ii) “Accounting authority” means the Board of the Human Sciences Research Council;
 - (iii) “chairperson” means the person appointed as chairperson in terms of section 5 (2);
 - (iv) “executive committee” means the executive committee referred to in section 9;
 - (v) “Council” means the Human Sciences Research Council, established in terms of section 2;
 - (vi) “Shareholder compact” means the performance agreement to be entered into between the Human Sciences Research Council and

its line department, including annexures thereto, as amended from time to time;

- (vii) “Minister” means the Minister responsible for the administration of this Act;
- (viii) “Department” means the department responsible for the administration of this Act;
- (ix) “Director-General” means the Director-General of the Department or any employee of the Department acting on the authority of the Director-General;
- (x) “chief executive officer” means the person appointed as chief executive officer of the Council in terms of section 12 (1);
- (xi) “research” means the generation, preservation, augmentation and improvement of knowledge by means of scientific investigations and methods in the field of the human sciences;
- (xii) “human sciences” means those sciences concerned with the study of the creations and the manner of mental activity of humans, human development, or mutual relationships, institutions or conditions in society;
- (xiii) “prescribe” means prescribe by regulation;
- (xiv) “regulation” means a regulation made in terms of section 22;
- (xv) “this Act” includes any regulation made under section 22.

Establishment of the Human Sciences Research Council

2. There is hereby established, as from a date fixed by the President of the Republic of South Africa by proclamation in the Gazette, a juristic person to be known as the Human Sciences Research Council.

Object of Council

3. The object of the Council is to promote, support and co-ordinate research, distribute the results of research, facilitate and evaluate the implementation of the results of research, stimulate human resource development and place the full spectrum of disciplines in the human sciences at the disposal of all the people of the Republic, and thereby contributing to the improvement of the quality of life of all its people.

Functions, powers and duties of Council

4. (1) The functions of the Council are-
 - (a) to foster and undertake fundamental and applied social science, from data gathering through information provision to analysis, relevant to the development challenges faced by South Africa, especially by means of projects linked into large scale, public sector oriented, collaborative programmes;

- (b) to contribute to the effective making, implementing and monitoring of policy and to informing public debate through the effective dissemination of the results of research;
- (c) to help build the capacity of the social science system and its members, as well as fostering their activity in collaborations, networks and institutional linkages;
- (d) to respond to the needs of research and analysis on development problems identified by such groups in society whose organisations on their own do not have the capacity to undertake or access such enquiries;
- (e) to develop and make publicly available new data sets to underpin research, policy development and public discussion of the key issues of development and to develop new and improved methodologies for use in their production; and
- (f) to take such other measures as the Council may deem necessary for the effective achievement of the objects of this Act.

(2) In order to achieve its objects the Council may-

- (a) subject to the provisions of this Act, perform any act which, in the opinion of the Board, is necessary for or incidental to the performance of its functions;
- (b) purchase or otherwise acquire, hold, hire, lease, sell, exchange or otherwise alienate movable or immovable

property, with the approval of the Minister, granted with the concurrence of the Minister of Finance; and

- (c) with the approval of the Minister, granted with the concurrence of the Minister of Finance, raise money by way of loans from any source, on such terms and conditions as may be agreed upon.

(3) In addition to its other functions in terms of this Act the Council shall-

- (a) undertake or procure the undertaking of such investigations and research relating to its object as the Minister may assign to it;
- (b) submit minutes of all meetings to the Minister for his or her information; and
- (c) advise the Minister with respect to—
 - (i) the research which should be undertaken in the interests of the country;
 - (ii) the manner in which research may be promoted;
 - (iii) the promotion of other matters incidental to the human sciences;
 - (iv) the manner in which human capital in research may be developed and utilised; and

(v) the utilisation of the results of research for the benefit of the country.

(4) The Council may—

(a) at the request of persons or organizations and subject to such conditions and the payment of such costs as may be agreed upon, conduct or cause to be conducted any investigation relating to any matter in the field of the human sciences; and

(b) in respect of any other service rendered by it under this Act, charge such fees or make such other financial arrangements as it may deem fit.

(5) The Council may, in order to achieve its object, with the approval of the Minister, granted with the concurrence of the Minister of Finance—

(a) for the purpose of developing, utilising, marketing or selling any invention, technological expertise, service or product, establish a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), or in association with any person establish such a company, or acquire an interest in or control over such a company; and

(b) act as trustee of any trust for the purpose of which is the promotion and development of the human sciences.

(6) The Minister must enter into a Shareholder compact with the Board.

Board of Council

5. (1) The affairs of the Council are controlled by a Board consisting of-
 - (a) a chairperson designated by the Minister;
 - (b) not less than six and not more than nine other members;
 - (c) the chief executive officer, who is an ex officio member;
 - (d) a representative of the employees of the HSRC; and
 - (e) a representative of the Department, who is an ex officio non-voting member, appointed by the Minister.
- (2) The Minister shall appoint the members of the Board referred to in subsection (1) (a), (b), (d) and (e) in the prescribed manner applying the principles of transparency and representivity.
- (3) The composition of the Board must be broadly representative of the gender, language and community composition of the Republic.
- (4) The members of the Board referred to in subsection (1)(a) and (b) are appointed in their personal capacities and shall be persons who have distinguished themselves in the field of the human sciences or possess special qualifications in relation to some aspect of the functions of the Council.
- (5) The members of the Board must be broadly representative of the various sectors in the field of the human sciences, at least one of

the members must have financial expertise and one should be a distinguished representative of the social science research community in the rest of Africa.

- (6) A member of the Board must vacate the office if-
- (a) the member resigns;
 - (b) the member's estate is sequestrated or assigned for the benefit of, or if the member compounds with, the creditors of the member;
 - (c) a competent court finds that the member is of unsound mind;
 - (d) the member is convicted of an offence and sentenced to imprisonment without the option of a fine;
 - (e) the member is absent from three consecutive meetings of the Board without the leave of the Board;
 - (f) the member is elected as a Member of the National Assembly or a provincial legislature, or appointed as a permanent delegate to the National Council of Provinces by a provincial legislature in accordance with the Constitution and the National Council of Provinces (Permanent Delegates Vacancies) Act, 1997 (Act 17 of 1997); and
 - (g) the member is no longer a citizen of the Republic of South Africa, except for the member from Africa appointed in terms of subsection 6.

- (7) The Minister may after consultation with the Board remove a member of the Board from office on reasonable grounds, after hearing the member on those reasons.
- (8) If a member of the Board dies, or resigns by written notice to the Minister, or vacates that office or is removed from office, the Minister may appoint a person in that member's place for the remaining part of the term of office.
- (9) A member of the Board holds office for a period not exceeding three years, subject to subsections (6) and (7), and may be reappointed.
- (10) No member may serve more than two consecutive terms.

Functions and allowances of members of Board

6. (1) The functions of the Board are-
 - (a) to formulate the strategic policies of the Council in consultation with the Minister;
 - (b) to approve the budget of the Council;
 - (c) to approve the financial statements of the Council;
 - (d) to advise the Minister with regard to matters with which the Council is concerned;
 - (e) to furnish the Minister with such information as the Minister may require; and

- (f) to perform such other functions as may be necessary for the proper guidance of the Council.
- (2) The Board must pay to a member of the Board who is not in the full-time employ of the State or who is not in the employ of the Council such allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

Meetings of Board

- 7. (1) The Board must meet at least four times a year at such times and places as the Board may determine.
- (2) The chairperson or, in the chairperson's absence, a member of the Board elected by the members present, must preside at a meeting of the Board.
- (3) The chairperson may convene a special meeting of the Board at such time and place as he or she may determine.
- (4) The quorum for a meeting of the Board is a majority of its members.
- (5) A decision of the Board must be taken by resolution of the majority of the members present at any meeting of the Board, and, in the event of an equality of votes on any matter, the person presiding at the meeting has a casting vote in addition to a deliberative vote as a member of the Board.

- (6) A member of the Council may not vote or in any manner participate in the proceedings at any meeting of the Council, nor be present at the venue where such a meeting is held if, in relation to any matter before the Council, he or she has any interest which precludes him or her from performing his or her functions as a member of the Council in a fair, unbiased and proper manner.

Committees of Board

8. (1) The Board may nominate one or more committees which may, subject to the instructions of the Board, perform those functions of the Board which the Board may determine.
- (2) The Board may appoint such number of members of the Board, and of the staff of the Council as the Board may deem fit, to be members of such committee, and the Board may at any time dissolve or reconstitute a committee.
- (3) If a committee consists of more than one member, the Board must designate a member of that committee as chairperson thereof.
- (4) A Board member may not serve on more than two committees.
- (5) The Board is not absolved from the performance of any function entrusted to any committee under this section.

Executive Committee

9. (1) The chairperson, the chief executive officer and at least two other members of the Board, designated by the Board, shall constitute an executive committee which, under supervision of the Board, shall perform such functions of the Board as the Board may determine.
- (2) The Board may designate any member of the Board as an alternate to a member of the executive committee.

Audit Committee

10. (1) The Board must establish an audit committee to assist it to perform its functions and to advise it in connection with any matter relating to the financial affairs of the Council.
- (2) The audit committee must consist of-
 - (a) a chairperson, who may not be the chairperson of the Board or in the employ of the Council; and
 - (b) at least two other members appointed by the Board such that the majority of members of the audit committee are not in the employ of the Council.
- (3) The majority of the members of the audit committee must have financial expertise.
- (4) The audit committee must meet at least twice a year.

Governance Committee

11. (1) The Board must establish a governance committee to assist it to perform its functions and to advise it in connection with any matter relating to the proper governance of the Council.
- (2) The governance committee must consist of-
 - (a) a chairperson, who is a member of the Board but who may not be the chairperson of the Board or in the employ of the Council; and
 - (b) at least two other members of the Board, designated by the Board.

Chief Executive Officer of Council

12. (1) The Board must appoint a chief executive officer who must be responsible for the management of the affairs of the Council. The appointment must be made after following a transparent and competitive selection process.
- (2) The chief executive officer must report to the Board on those affairs which the Board may require.
- (3) The chief executive officer must be appointed or re-appointed for such period, not exceeding five years, and subject to such conditions relating to the payment of remuneration and allowances, as the Board may, subject to section 13 (2), determine.
- (4) The chief executive officer must enter into a performance agreement with the Board before taking up his or her post as chief executive officer.

- (5) Whenever the chief executive officer is absent or unable to carry out her or his duties, or whenever there is a vacancy for the office of chief executive officer, the Board may appoint any person in the service of the Council to act as chief executive officer.
- (6) The acting chief executive officer has all the powers and performs all the duties of the chief executive officer.
- (7) The chief executive officer is responsible for the accounting of all money received by the Council, the utilisation thereof and the property of the Council.

Employees of Council

- 13. (1) Subject to subsection (3), the chief executive officer may, on such conditions as the Board may determine, appoint such employees, or receive on secondment such persons as are necessary to enable the Council to perform its functions.
- (2) The Council must pay to its staff out of its funds such remuneration, allowances, subsidies and other benefits as the Board may determine in accordance with a system approved for that purpose by the Minister with the concurrence of the Minister of Finance.
- (3) The Board may, with the consent of an employee, on such conditions as the Board may determine, second the employee either for the performance of a particular service or for a period of time to the service of a department of the State, the government of

any province, territory or country, or a person in or outside the Republic.

- (4) That employee's rights, privileges and benefits by virtue of her or his conditions of service as an employee of the Council may not be adversely affected by the secondment.

Pensions

14. (1) The Council—
- (a) must for purposes of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), be regarded as being an associated institution, but
 - (b) may, under the Pension Funds Act, 1956 (Act No. 24 of 1956), establish any other pension fund for its employees.

Transfer of certain persons to or from employ of Council

15. (a) A person who is in the full-time employ of the State or of an institution receiving financial aid from the State may, with his or her consent, and subject to the laws governing the public service and the approval of the Board, be transferred or seconded to the employ of the Council.
- (b) A person who is in the employ of the Council may, with his or her consent, and subject to the laws governing the public service and the

approval of the Board, be transferred or seconded to the employ of the State or an institution receiving financial aid from the State.

Transfer of certain assets to Council

16. Any immovable property belonging to the State may, on such conditions as the Minister may, with the concurrence of the Minister of Finance, determine, be transferred to the Council in order to enable the Council to perform its functions.

Intellectual Property Rights

17. (1) Subject to the provisions of subsection (4), the rights in respect of any invention or design made by an employee of the Council in the course of his or her employment as an employee of the Council, shall vest in the Council. An employee shall be obliged to make such invention or design available to the Council. The Council may elect not to use such an invention or design. In such a case the rights must be offered wholly and exclusively to the inventors or originators of the work.
- (2) If the rights in respect of an invention or design properly registered in South Africa are in terms of subsection (1) vested in the Council or assigned by the Council, the Board must award to the person responsible for the invention, financial participation by him or her in the net proceeds derived from such invention or design at a minimum of thirty percent of such proceeds. The Council shall ensure that such payments are on terms and conditions that the Council shall not take preference over the employee in the timing of such payments.

- (3) The Council may apply for a patent or register a design in respect of an invention or design contemplated in subsection (1), and shall, for the purposes of the Patents Act, 1978 (Act No. 58 of 1978), be regarded as the assignee of the inventor in question.
- (4) The rights in respect of any invention or design made as a result of an investigation conducted in terms of subsection 4(4)(a) shall vest in the Council.
- (5) The Council may elect to transfer the assignment of such rights to a third party under the following conditions:
 - (a) the right to benefit sharing by the inventor or designer shall survive the assignment of such rights and explicit agreement in this respect shall be secured by the Council;
 - (b) priority shall be given to South African institutions in respect of the transfer of rights;
 - (c) priority shall, when rights are transferred to business entities, be given to small and medium enterprises as defined in the National Small Business Act (Act No. 102 of 1996); and
 - (d) priority shall, when rights are transferred to business entities, be given to black economic empowerment firms as defined in the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003).
- (6) The Council must, with regard to investigations and research conducted by employees of the Council-

- (a) ensure in work conducted in respect of indigenous knowledge that written information transfer and material transfer agreements, subject to properly informed consent are established prior to the undertaking of research;
- (b) secure with the consent of the parties any invention, discovery or improvement derived from indigenous knowledge, originally held by any person or community in such a manner that the person or community can participate in the benefits arising from such protection;
- (c) protect all rights of the person or community arising from the original indigenous knowledge and any invention, discovery or improvements.

Financing of Council

18. (1) The funds of the Council shall consist of-
- (a) money appropriated by Parliament;
 - (b) money borrowed by the Council in terms of subsection 4(2)(c);
 - (c) revenue obtained by virtue of the provisions of subsection (4);
 - (d) fees or royalties paid to the Council in terms of subsection 18(1);

- (e) donations or contributions received by the Council;
 - (f) revenue accruing to the Council from any other source, including remuneration for services rendered in terms of this Act.
- (2)
- (a) Subject to the provisions of subsection (6), the Council must utilise its funds to defray expenditure in connection with the performance of its functions in terms of this Act.
 - (b) The Council must utilise any moneys contemplated in subsection (1)(a) in accordance with the statement referred to in subsection (3)(a).
 - (c) The Council must utilise any donations or contributions contemplated in subsection (1)(e) in accordance with the conditions (if any) imposed by the donor or contributor in question.
- (3) The Council-
- (a) must in each financial year, at a time determined by the Minister, submit a statement of the Council's estimated income and expenditure projected over the following three financial years to the Minister for his or her approval, granted with the concurrence of the Minister of Finance;
 - (b) may in any financial year submit supplementary statements of its estimated expenditure for that financial year to the Minister for approval, granted with the concurrence of the Minister of Finance; and

- (c) may not budget for a deficit and may not enter into any financial commitment beyond its approved budgets and its accumulated reserves.
- (4) The Council may, in respect of any work completed or service rendered by it under this Act, or for the use of rights consequent upon any discoveries, inventions or improvements, charge such fees or make such other financial arrangements as it may deem fit;
 - (a) provided that inventors and designers shall be eligible for benefit sharing and shall receive a minimum of thirty percent of the net proceeds; and
 - (b) the right to benefit sharing by an inventor or designer shall be retained in respect of assignment of intellectual property rights to a third party.
- (5) The Council may invest any unexpended portion of its funds with the Corporation for Public Deposits or, with the approval of the Minister, granted with the concurrence of the Minister of Finance, dispose thereof in any other manner.
- (6) The Council may establish such reserve funds, and may deposit therein such amounts as the Minister may, with the concurrence of the Minister of Finance, approve.

Auditing, annual and financial reports

19. (1) The financial year of the Council shall end on 31 March in each year.
- (2) The Council must keep full and proper records of its assets and of its financial affairs.
- (3) The accounts of the Council must be audited annually by the Auditor-General or its assignee.
- (4) The Council must furnish to the Minister such information in connection with the activities, performance against predetermined objectives and financial position of the Council as the Minister may require, and must within five months of the end of the financial year submit to the Minister an annual report containing a balance sheet, a statement of income and expenditure and all other supporting schedules as may be required in terms of generally accepted accounting principles, in respect of the financial year, certified by the Auditor-General, and such other particulars as the Minister may require.
- (5) The Minister must table the annual report in Parliament within 30 days after the receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session.

Losses and damage

20. (1) The chief executive officer must determine the amount of loss or damage if a person who is or was in the service of the Council caused the Council any loss or damage because that person–

- (a) failed to collect money due to the Council for the collection of which he or she was responsible;
 - (b) is or was responsible for an irregular payment of money of the Council or for a payment of such money not supported by a proper voucher;
 - (c) is or was responsible for fruitless expenditure of money of the Council owing to failure to carry out his or her duties;
 - (d) is or was responsible for a deficiency in, or the destruction of, or any damage to the Council's money, stamps, face value documents and forms having a potential value, securities, equipment, stores or any property of the Council;
 - (e) is or was responsible for a claim against the Council owing to failure to carry out his or her duties.
- (2) The chief executive officer may order that person, by notice in writing, to pay to the Council, within 30 days from the date of such notice, the whole or any part of the amount determined in subsection (1), provided that the chief executive officer may not make such an order before the person concerned has been afforded an opportunity to make representations in writing to the chief executive officer regarding the loss or damage which the person is alleged to have caused, provided that if the chief executive officer is the offending party, the accounting authority will deal with matter.

- (3) If the person fails to pay the amount within the period stipulated in the notice in question, the—
 - (a) amount may, subject to subsections (4) and (5), be deducted from his or her monthly salary, provided that such deduction may not in any month exceed one fourth of such monthly salary; and
 - (b) chief executive officer may, subject to subsections (4) and (5), recover the amount from such person by way of legal process.
- (4) If, within the period stipulated in the notice in question, the person makes an offer to pay the amount in instalments, the chief executive officer may allow payment in such instalments as may be reasonable.
- (5) A person who has in terms of subsection (2) been ordered to pay an amount may, within a period of 30 days from the date of the order, appeal in writing against such order to the Board, stating the grounds of appeal, and the Board may, after such investigation as may be necessary, dismiss the appeal or order that the appellant be exempted, either wholly or partially, from the payment of such amount.

Delegations

21. (1) The Board may—

- (a) delegate to the chairperson, any member or committee of the Board, the chief executive officer or any other employee of the Council any power conferred upon the Board under this Act; or
 - (b) authorise the chairperson, any such member or committee of the Board, the chief executive officer or any such other employee of the Council to perform any duty assigned to the Board under this Act.
- (2) The chief executive officer may—
- (a) delegate to an employee of the Council any power conferred upon the chief executive officer under this Act; or
 - (b) authorise such employee of the Council to perform any duty assigned to the chief executive officer under this Act.
- (3) Any delegation or authorisation under subsection (1) or (2) does not prohibit the exercise of power or performance of the duty in question by the Board or the chief executive officer, as the case may be.

Regulations

22. (1) The Minister may make regulations regarding—
- (a) matters which are required or permitted to be prescribed in terms of this Act;

- (b) the investigation of a charge of misconduct or inefficiency against a person in the employ of the Council, or of any alleged irregularity in connection with the affairs of the Council, conduct constituting misconduct, the procedure to be followed at such an investigation, the summoning and attendance of witnesses, and the sanction that may be imposed upon or other steps that may be taken against such a person;
 - (c) the procedure for the investigation of an alleged grievance of an employee; and
 - (d) generally, any matter in respect of which regulations are regarded necessary or expedient in order to achieve the objects of this Act.
- (2) The Minister must publish any regulations made under this section in the Gazette.

Transitional provisions and savings

23. (1) The Human Sciences Research Council established by section 2 of the Human Sciences Research Act, 1968 (Act No. 23 of 1968), shall, notwithstanding the repeal of the Human Sciences Research Act, 1968, by this Act, continue to exist as a juristic person known as the Human Sciences Research Council.
- (2) At the commencement of this Act anything done in terms of the provisions of the Human Sciences Research Act, 1968 (Act No. 23 of 1968), prior to such commencement and which may be done in

terms of the provisions of this Act, shall be deemed to have been done in terms of the provisions of this Act.

- (3) If at the commencement of this Act any matter has not been disposed of by the Human Sciences Research Council or a committee thereof, the Board established in terms of this Act may continue with the disposal of the matter in accordance with the provisions of this Act, and anything done in connection with that matter shall be deemed to be done by the Board.
- (4) Any regulation made under section 14 of the Human Sciences Research Act, 1968, and in force at the repeal of that Act by section 24 of this Act shall, notwithstanding such repeal, remain in force after the commencement of this Act in so far as it deals with any matter in respect of which the Minister may make regulations under section 22, until it is replaced by a regulation made under section 22.
- (5) The conditions of service and the remuneration applicable to the incumbent of the post of president in terms of the Human Sciences Research Act, 1968, shall not be altered without his approval when this Act comes into operation.
- (6) At the commencement of this Act all rights, obligations, assets and liabilities acquired or incurred by the Human Sciences Research Council in terms of the Human Sciences Research Act, 1968, vest in the Council and the Council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.

Repeal of Act 23 of 1968

24. The Human Sciences Research Act, 1968, is hereby repealed.

Short title and commencement

25. This Act is called the Human Sciences Research Council Act, 2004, and shall come into operation on a date fixed by the President of the Republic by proclamation in the Gazette.

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