27 July 2020

TO: NATIONAL PLANNING COMMISSION
C/O: Mr Ashraf Kariem
E-mail: ashraf@dpme.gov.za

**DIGITAL FUTURES: SOUTH AFRICA'S READINESS FOR THE
FOURTH INDUSTRIAL REVOLUTION**

SUBMISSION BY MEDIA MONITORING AFRICA

**ENDORSED BY THE SOUTH AFRICAN NATIONAL EDITORS' FORUM, THE INTERACTIVE
ADVERTISING BUREAU OF SOUTH AFRICA, THE CENTRE FOR HUMAN RIGHTS, AND THE
COALITION ON THE AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS**

For more information, please contact:

William Bird, Director, Media Monitoring Africa
Email: williamb@mma.org.za
Tel: +27 11 788 1278

Thandi Smith, Head of Policy, Media Monitoring Africa
Email: thandis@mma.org.za
Tel: +27 11 788 1278

TABLE OF CONTENTS

INTRODUCTION

1.   This submission on the Draft Paper on Digital Futures: South Africa's Digital Readiness for the Fourth Industrial Revolution (Draft Paper) is made by Media Monitoring Africa (MMA), and endorsed by the South African National Editors' Forum (SANEF), the Interactive Advertising Bureau of South Africa (IABSA), the Centre for Human Rights (CHR), and the Coalition on the African Declaration on Internet Rights and Freedoms (AfDec Coalition).

   1.1.   **MMA** is a not-for-profit organisation that has been monitoring the media since 1993. MMA's objectives are to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom. MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical and critical media culture. MMA has over 25 years' experience in media monitoring and direct engagement with media, civil society organisations and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. For more about MMA, please visit: www.mediamonitoringafrica.org.

   1.2.   **SANEF** is a not-for-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media. SANEF is committed to championing freedom of expression and promoting quality, ethics and diversity in the South African media. SANEF aims to be a representative and credible voice to journalism in society, to facilitate diversity in newsrooms and reporting, enable a culture of real debate, and promote free and independent journalism of the highest standard. SANEF campaigns for the elimination of legislation and commercial pressures that restrict media, and supports the establishment of editors' forums in other parts of the region. For more about SANEF, please visit: https://sanef.org.za.

   1.3.   **IABSA** is an independent, voluntary, not-for-profit organisation focused on growing and sustaining a vibrant and profitable digital industry within South Africa. The IABSA currently represents more than 200 members, including online publishers, brands and educational institutions, as well as creative, media and digital agencies. The IABSA aims to provide members with a platform where they can engage and interact with each other on digital issues of common interest, thereby stimulating learning and growth within the digital space. For more about the IABSA, please visit: https://www.iabsa.net.

   1.4.   **CHR**, based in the Faculty of Law at the University of Pretoria, is recognised internationally for excellence in human rights law in Africa, and is uniquely positioned as both an academic department and a non-governmental organisation. CHR works towards a greater awareness of human rights, the wide dissemination of publications on human rights in Africa, and the improvement of the rights of women, people living with HIV, indigenous peoples, sexual minorities and other disadvantaged or marginalised persons or groups across the continent.

CHR is at the hub of an unmatched network of practising and academic lawyers, national and international civil servants and human rights practitioners across the continent. For more about CHR, please visit: https://www.chr.up.ac.za/.

1.5. **The AfDec Coalition** seeks to advance the African Declaration on Internet Rights and Freedoms, which is a Pan-African Initiative to promote human rights standards and principles of openness internet policy formulation and implementation on the continent. The Declaration is intended to elaborate on the principles which are necessary to uphold human and peoples' rights on the internet, and to cultivate an internet environment that can best meet Africa's social and economic development needs and goals. The mission of the AfDec Coalition is for the Declaration to be widely endorsed by all those with a stake in the internet in Africa, and to help shape approaches to internet policy-making and governance across the continent. For more about the AfDec Coalition, please visit https://africaninternetrights.org/.

2. Together, the abovementioned organisations welcome the opportunity to provide this submission, and note the important purpose that the Draft Paper serves in ascertaining South Africa's readiness for the Fourth Industrial Revolution (4IR). In our view, constructive and meaningful recommendations that are appropriately implemented by relevant stakeholders have the potential to contributing positively towards overcoming the digital divide in South Africa, as well as opening up access to the unprecedented development opportunities offered by digital technologies.

3. This submission is structured as follows:

   3.1. **First**, an overview of the seven-point implementation plan, developed by the organisations, with the aim of achieving universal access to the internet and free public access in South Africa.

   3.2. **Second**, our call to ensure that the Draft Paper and its recommendations are underpinned by a human rights-based approach.

   3.3. **Third**, our submissions on specific aspects of the existing recommendations contained in the Draft Paper.

   3.4. **Fourth**, our proposals for additional recommendations that we submit should be incorporated into the Draft Paper.

4. These are dealt with in turn below.

UNIVERSAL ACCESS TO THE INTERNET AND FREE PUBLIC ACCESS IN SOUTH AFRICA

5. In September 2019, four organisations – MMA, SANEF, IABSA and the Association for Progressive Communications (APC) – launched a report titled 'Universal access to the internet and free public access in South Africa: A seven-point implementation plan'[1] (Seven-Point Plan). The Seven-Point Plan consists of the following measures:

    5.1. **Free public access to the internet at government facilities** that allow any member of the public to make use of computers with broadband connection, along with associated ICT tools, such as printers, as well as technical support for using the internet. This assists in providing an opportunity for persons who are not connected to the internet to make meaningful use of the benefits that it can offer, and assists persons in overcoming challenges such as high costs, lack of devices with internet connectivity, or lack of electricity.

    5.2. **Zero-rated access to government websites** to advance the effective democratic functioning of the government by enabling more efficient access to services, facilitating increased responsiveness by governments and by engendering a culture of transparency, accountability and ultimately public trust.

    5.3. **Free wi-fi in public spaces** that is safe, available in both urban and rural areas, and meets the requirements of meaningful access and connectivity.

    5.4. **Access to the internet as a basic municipal service**, in line with present basic municipal services that are necessary to ensure an acceptable and reasonable quality of life.

    5.5. **Digital literacy and skills development programmes** to allow, encourage and facilitate effective exercise of democratic rights by the public to access, search, critically assess, use and contribute content wisely, both on- and offline. Through these interventions, the aim is to enhance understanding of the ethical issues that surround the access and use of information and how to engage with media and ICTs to promote equality, dialogue, peace, sustainability, freedom of expression and access to information.

    5.6. **Minimum protections in the provision of free access to the internet** to ensure that those who access free services online are not prejudiced in the enjoyment of their other rights, including their privacy rights.

    5.7. **Oversight and monitoring of the progressive realisation of free access to the internet**, through the cooperation of various stakeholders to ensure that access to the internet forms a component of state reporting, and that there is accountability for the extent to which the government is realising universal access to online information in the full realisation of rights.

---

[1] Accessible at https://internetaccess.africa/universal-access/.

6.	In sum, the Seven-Point Plan seeks to provide a holistic approach aimed at the following overarching themes:

6.1.	**Access to relevant content:** The first theme seeks to provide universal access to relevant online content and to provide a basic level of free access to those who cannot afford it. Through the set of proposed measures, it is intended that all persons in South Africa should be enabled to enjoy the benefits that the internet can offer, regardless of their income, so that the cost of access does not present an insurmountable barrier.

6.2.	**Safety of access:** The second theme seeks to ensure that, once people are online, they are safe and free from harm, and have the skills to ensure the can benefit from the enormous potential of being online. This is further intended to ensure that people have trust in the internet, and can maximise the developmental potential that access to the internet presents. This requires appropriate skills development to empower users with the necessary information, and to ensure that safeguards underpin the systems themselves to protect the rights of users and the systems themselves.

6.3.	**Implementation of access:** The third theme is intended to ensure that the overarching aim of the Seven-Point Plan – this being to achieve universal and free access to online information in South Africa – is realised. This requires targets to be set, relevant data to be gathered and analysed, and a process of monitoring and evaluation to be undertaken to ensure that the realisation of this aim remains consistently on track.

7.	This submission is informed by the research undertaken to develop the Seven-Point Plan, as well as relevant human rights instruments and frameworks.

NEED FOR A HUMAN RIGHTS-BASED APPROACH

8.	At the outset, we submit that the Draft Paper should include a clear and upfront recommendation that all measures taken in terms of the Draft Paper must be done with an express human rights-based approach that is duly cognisant of the need to respect, protect, promote and fulfil the rights in the Constitution, as well as South Africa's commitments under regional and international law. This should be accepted as underpinning all the recommendations in the Draft Paper. We submit further that it would be useful for the Draft Paper to set out these obligations and commitments in order to frame the discussion through a rights-based lens.

9.	In this section we highlight two aspects that should be incorporated into the draft paper: (i) the applicable constitutional framework; and (ii) the relevant international law commitments on access to the internet, both in respect of civil and political rights and in respect of socio-economic rights. These are dealt with in turn below.

Constitutional framework

10.   The Draft Paper raises important issues relating to the realisation of fundamental rights in South Africa.   Section 1 of the Constitution of the Republic of South Africa, 1996 (Constitution) makes clear that South Africa is founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms.[2]   The state is required to respect, protect, promote and fulfil the rights in the Bill of Rights, which consequently requires the state to take both positive and negative measures to realise the fundamental rights of people in South Africa.[3]   The Bill of Rights also binds all organs of state,[4] as well as natural and juristic persons to the extent applicable.[5]

11.   As South Africa seeks to harness the benefits of technology and realise the impact of the 4IR, it is imperative that any strategy has a clear constitutional underpinning.   This includes reference to the following rights:

   11.1.   **Equality and non-discrimination:** Equality includes the full and equal enjoyment of all rights and freedoms.[6]   Neither the state nor any person may unfairly discriminate against any person on any of the prohibited grounds, which includes race, gender, sex, ethnic or social origin, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.[7]   Additionally, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) includes in the definition of "prohibited ground" any other ground that causes or perpetuates systemic disadvantage; undermines human dignity; or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner.[8]

   11.2.   **Information rights:** The Constitution provides for the right to freedom of expression, access to information and privacy.[9]   In particular, the right to freedom of expression includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.[10]   The freedom to receive or impart information or ideas is emphasised by the right of access to information, which guarantees that everyone has the right to information held by the state, as well as to any information held by another person that is required for the exercise or protection of any rights.[11]   Moreover, the Constitution provides that everyone has the right to privacy, which includes the right not to have the privacy of their communications infringed.[12]

---

[2] Section 1(a) of the Constitution.
[3] Section 7(2) of the Constitution.
[4] Section 8(1) of the Constitution.
[5] Section 8(2) of the Constitution.
[6] Section 9(2) of the Constitution.
[7] Section 9(3) and (4) of the Constitution.
[8] Section 1 of PEPUDA.
[9] Section 14 of the Constitution.
[10] Section 16(1) of the Constitution.
[11] Section 32(1) of the Constitution.
[12] Section 14(d) of the Constitution.

11.3. **Best interests of the child:** The Constitution stipulates that a child's best interests are of paramount importance in every matter concerning the child. The Constitutional Court has explained that children do not have the same capacity as adults to protect themselves, and are therefore more in need of protection in line with their best interests.[13] This entails an obligation for the law to do all that it can to create conditions that protect children and expand their opportunities, so that they can lead productive and happy lives.[14] With reference to the interplay of the abovementioned rights, the Constitutional Court has held that the "analysis of the right to privacy is even more pressing when dealing with children", including on the basis that the "protection of the privacy of young persons fosters respect for dignity, personal integrity and autonomy".[15]

12. These rights play a critical role in the development and implementation of any strategy or recommendations on the 4IR. For example, with regard to the right to equality, it must be central to the strategy that all persons are able to enjoy the benefits of the 4IR, without deepening existing socio-economic divides or causing systemic disadvantage to those who cannot afford to enjoy the benefits of technology. The strategy should be characterised by openness, transparency and accountability, which requires the free flow of information and the protection and promotion of the media. Additionally, any strategy must pay due regard to vulnerable or marginalised groups of persons, including children whose best interests must be considered as key to the approach.

International law commitments on access to the internet

<u>Civil and political rights</u>

13. In addition to the rights set out above, there has also been a developing norm under international law regarding access to the internet. It is well-established under international law that the same rights that apply offline also apply online. In 2012, the United Nations Human Rights Council passed an important resolution that called on states to facilitate access to the internet and international cooperation aimed at the development of media and communications facilities in all countries.[16] Following this, in 2016, the Human Rights Council affirmed that "the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights."[17]

---

[13] <u>De Reuck v Director of Public Prosecutions (Witwatersrand Local Division)</u> [2003] ZACC 19; 2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC) at para 63.
[14] <u>S v M</u> [2007] ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC) at para 20.
[15] <u>Centre for Child Law v Media 24 Limited</u> [2019] ZACC 46 at para 49.
[16] Human Rights Council, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/20/L.13 (2012) at para 2.
[17] Human Rights Council, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/32/L.20 (2016).

14. The Human Rights Council further recognised the global and open nature of the internet as a driving force in accelerating progress in various forms, including in achieving the Sustainable Development Goals.[18] The resolution also affirmed the importance of applying a comprehensive rights-based approach in providing and expanding access to the internet, and called on states to consider formulating and adopting national internet-related public bodies with the objective of universal access and the enjoyment of human rights at their core.[19] Two categories of persons were recognised as deserving of special protection:

14.1. **Women and girls:** The first relates to women and girls. The resolution echoed the call contained in the Sustainable Development Goals for states to bridge the gender digital divide and enhance the use of enabling technologies, in particular ICTs, to promote the empowerment of women and girls.[20]

14.2. **Persons with disabilities:** The second relates to persons with disabilities. In this regard, the resolution called on states to take appropriate measures to promote the design, development, production and distribution of ICTs that would be accessible to persons with disabilities.[21]

15. In the regional context, also in 2016, the African Commission on Human and Peoples' Rights (African Commission) similarly affirmed that the same rights that people have offline must also be protected online, and called on states to promote and facilitate access to the internet and international cooperation aimed at the development of media and information and communications facilities in all countries.[22] The African Commission further called on states to take legislative and other measures to guarantee, respect and protect citizen's right to freedom of information and expression through access to the internet.[23]

16. Recently, in a significant development in 2019, the African Commission adopted the revised Declaration of Principles on Freedom of Expression and Access to Information in Africa[24] (Declaration on Freedom of Expression). In terms of the Declaration on Freedom of Expression, the African Commission again affirmed that the exercise of the rights to freedom of expression and access to information shall be protected from interference both on- and offline, and that states must interpret and implement the protection of these rights accordingly.[25]

---

[18] Id at para 2.
[19] Id at paras 5 and 12.
[20] Id at para 6.
[21] Id at para 7. Added to this, in respect of persons with disabilities, the Convention on the Rights of Persons with Disabilities (CRPD) provides that: "States Parties shall take appropriate measures to promote access for persons with disabilities to new information and communications technologies and systems, including the Internet." The CRPD also provides that states parties, in ensuring that people with disabilities can exercise the right to freedom of expression and opinion, shall take all appropriate measures, including by "[u]rging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities."
[22] African Commission, 'Resolution on the right to freedom of information and expression on the internet in Africa', ACHPR/Res.362(LIX) (2016).
[23] Id at para 1.
[24] Accessible at https://www.achpr.org/legalinstruments/detail?id=69.
[25] Principle 5 of the Declaration on Freedom of Expression.

17.   Regarding access to the internet specifically, the Declaration on Freedom of Expression states as follows:[26]

> "**Access to the internet**
> (1) States shall facilitate the rights to freedom of expression and access to information online and the means necessary to exercise these rights.
> (2) States shall recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights.
> (3) States shall, in cooperation with all relevant stakeholders, adopt laws, policies and other measures to provide universal, equitable, affordable and meaningful access to the internet without discrimination, including by:
>> (a) developing independent and transparent regulatory mechanisms for effective oversight;
>> (b) improving information and communication technology and internet infrastructure for universal coverage;
>> (c) establishing mechanisms for regulating market competition to support lower pricing and encourage diversity;
>> (d) promoting local access initiatives such as community networks for enabling the increased connection of marginalised, unserved or underserved communities; and
>> (e) facilitating digital literacy skills for inclusive and autonomous use.
> (4) In providing access to the internet, States shall take specific measures to ensure that marginalised groups have effective exercise of their rights online.
> (5) States shall adopt laws, policies and other measures to promote affordable access to the internet for children that equips them with digital literacy skills for online education and safety, protects them from online harm and safeguards their privacy and identity."

Socio-economic rights

18.   While access to the internet is typically considered through the lens of civil and political rights, it also plays a crucial role in the context of socio-economic rights. In particular, article 15(1)(b) of the International Covenant on Economic, Social and Cultural Rights provides that states must recognise the right of everyone to enjoy the benefits of scientific progress and its applications. In this regard, in 2019, South Africa accepted the following recommendation from the United Nations Committee on Economic, Social and Cultural Rights (CESCR):[27]

> "**Access to the internet**
> (1) The Committee is concerned at the low rate of Internet access, particularly in rural areas and in schools, and at the lack of affordability of the Internet for the most disadvantaged groups (art. 15).

---

[26] Principle 37 of the Declaration on Freedom of Expression.
[27] CESCR, 'Concluding report on the initial observations on South Africa', E/C.12/ZAF/CO/1 (2018) at paras 76-77.

(2) The Committee recommends that the State party adopts relevant measures to ensure the accessibility and affordability of the Internet, particularly in schools, rural areas and for the most disadvantaged groups."

19.   In a recent research report published by the South Africa in the Digital Age (SADA) initiative, it has been proposed that digital access should be established as a socio-economic right as part of the long-term investments and actions over the next five years.[28] It states in this regard that "to recognise the foundational role that digital access plays in realising digital economic opportunities inclusively, the country should consider whether digital access now constitutes a socio-economic right in South Africa".[29] As noted in the report, this would serve to elevate the discourse and would presumably focus public sector attention on this issue; however, such a proclamation would be somewhat hollow without the accompanying obligations on identified parties to deliver such access, and the legal and financial implications of such an obligation may be challenging.[30]

20.   This remains an important point for discussion that should be encouraged as part of any strategy in respect of the 4IR.

SUBMISSIONS ON EXISTING RECOMMENDATIONS IN THE DRAFT PAPER

21.   We note that, while the Draft Paper is rich in content and detail, the recommendations are comparatively sparse. We are concerned that without providing more specific information to the recommendations, it may result in them not being meaningfully implemented. As such, the submissions below set out our proposals for additional content that we propose should be addressed in the recommendations in the Draft Paper.

National digital policy

Rights-based framework

22.   The development, content and implementation of any national digital policy must be done with a rights-based framework in mind. This is key to ensuring that the national digital policy serves to the benefit of all persons in South Africa, and achieves the developmental potential that the 4IR can offer. As set out above, there are a number of relevant constitutional provisions and international law commitments that are relevant in this regard. We submit that the Draft Paper should include a recommendation in its discussion on the national digital policy to ensure that this is developed as a rights-based framework that duly incorporates the relevant fundamental rights and freedoms.

---

[28] SADA, 'Pathways to digital work: A strategy primer for South Africa's digital economy' (2020) at p 28.
[29] Id.
[30] Id at p 37.

Meaningful universal access to the internet

23.   We submit that the national digital policy should make clear that meaningful universal access to the internet for all persons in South Africa is a primary objective. As we have explained in the Seven-Point Plan, this should be understood as more than simply coverage; rather, in order for access to be both meaningful and universal, it should be seen as existing on a continuum, taking into account various factors such as the cost of data, the network speed and reliability, and the level of digital literacy. Furthermore, APC describes meaningful access as:[31]

> "[P]ervasive, affordable connectivity (of sufficient quality and speed) to the internet in a manner that enables individuals to use and benefit from internet use, including to participate in the public sphere, exercise human rights, access and create relevant content, and engage with people and information for development and well-being."

24.   Drawing on the Seven-Point Plan, we submit that the recommendations in the Draft Paper should make clear that the national digital policy must engage aspects pertaining to the following:[32]

24.1.   **Accessibility**, including the ability of all people to use and access services, regardless of financial status, education, disability, age, gender and other relevant factors.

24.2.   **Availability** of networks and coverage.

24.3.   **Affordability**, including the ability to pay for access to infrastructure, networks devices and services.

24.4.   **Awareness** by users and potential users of what is available and the benefits of these.

24.5.   **Ability** of different groups of people and individuals to not only access services and acquire information and data, but also to use the information and data to enhance the quality of their lives.

24.6.   **Quality of service** and the expectation that the services provided should be of good quality and appropriate standards.

---

[31] APC, 'Response to the ITU Council Working Group: Internet open consultation on bridging the digital gender divide (2018) at 3.
[32] Seven-Point Plan at pp 7-8.

Need for coordination and multi-stakeholder engagement

25.   Our third submission in this regard relates to the need for coordination and multi-stakeholder engagement. Indeed, in terms of section 41(1)(c) of the Constitution: "[a]ll spheres of government and all organs of state within each sphere must provide effective, transparent, accountable, and coherent government for the Republic as a whole" and must "co-operate with one another in mutual trust and good faith by coordinating their actions and legislation with one another".[33] MMA has previously noted:[34]

> "[T]here is a lack of any overarching internet governance policy on how current and proposed legislation that deals with information and digital rights regulation is to be managed by the different role-players or on how co-ordination amongst the various role-players is to function. In the absence of a clear government internet governance policy and legislative guidance, an unduly complex structure of oversight is in the process of being created.
>
> The result is that that people in South Africa, civil society organisations, and members of the media, among others, need to navigate an overly complex regulatory landscape in order to engage in public participation, make submissions, conduct their business, and, ultimately, defend and protect their information rights. Additionally, this poses significant challenges to government's coordinated and effective implementation of the existing regulatory provisions, and may result in overlapping mandates or aspects not being assigned or accounted for by appropriate functionaries."

26.   Accordingly, we propose the establishment of an Interdepartmental Steering Committee (ISC) on Internet Governance to address relevant matters, including access to the internet and the implications of the 4IR. It is proposed that the ISC on Internet Governance would bring together different government departments, including the Office of the Presidency; the Department of Communications and Digital Technologies; the Department of Justice and Constitutional Development; the Department of Basic Education; the Department of Higher Education, Science and Technology; and National Treasury. It should also include the relevant regulators, including the Independent Communications Authority of South Africa (ICASA) and the Information Regulator.

27.   Further to the above, and drawing inspiration from the Judicial Services Commission, it is proposed that the ISC on Internet Governance should include two representatives from opposition parties represented in the National Assembly; two teachers of law or members of the legal profession with knowledge of internet governance laws; two technical experts in internet governance; and two members of civil society working on internet governance. The last-mentioned categories of persons should be selected following a public call for nominations.

---

[33] Section 41(1)(h)(iv) of the Constitution.
[34] MMA, 'Submission to the Competition Commission of South Africa' (2019) at 13.

28. In our submission, the objects of the ISC on Internet Governance should reflect a broader internet governance mandate and the multi-disciplinary, cross-cutting challenges that these issues present. Our proposal to include opposition parties, members of the legal profession, technical experts and civil society seeks to ensure accountability, a diversity of views and the requisite technical expertise. We therefore urge the drafters to include a recommendation for the establishment of an ISC on Internet Governance as part of the recommendations contained in the Draft Paper.

Enabling environment for broadband extension

Connectivity targets

29. We are deeply concerned that SA Connect, which came into operation in 2013, is both out of date and no longer fit-for-purpose. We therefore agree with the recommendation that SA Connect needs to be reviewed and updated, and that the decision to have Broadband Infraco as the implementing partner needs to be revisited. In addition to the existing recommendations, we also submit that the recommendations should expressly note that the targets in SA Connect need to be revised.

30. For the general user, SA Connect provides that by 2020, 90% of the population should have broadband access at 5Mbps, with 50% having access at 100Mbps; and by 2030, 100% of the population should have broadband access at 10Mbps, with 80% having access at 100Mbps. We are concerned, however, that speeds of 5Mbps and 10Mbps will not be effective to enable the broader population to truly realise the full benefit of the internet, including to be able to stream content, code and develop.

31. Accordingly, it is necessary for these targets to be updated in line with progress that has been made, including the availability of fibre networks to facilitate faster speeds.

Innovative uses of spectrum

32. We welcome the recommendation that innovative uses of licensed and unlicensed spectrum should be employed. However, we submit that this recommendation should go further to provide more substance on how this can be implemented. Specifically, we submit that the recommendations in the Draft Paper should make express reference to the importance of community networks and other local access initiatives.

33. Of relevance, the AfDec Coalition has explained that "these decentralised community-built and owned networks are amongst the most effective ways to overcome digital exclusion in areas that are still isolated from the social and economic dynamics of the digital era".[35] Similarly, the Declaration on Freedom of Expression calls on states, in cooperation with all relevant stakeholders, to promote local access initiatives, such as community networks, for enabling the increased connection of marginalised, underserved or underserved communities.[36]

---

[35] AfDec Coalition, 'Position paper in response to the COVID-19 pandemic' (2020) at pp 4-5.
[36] Principle 37(3)(d) of the Declaration on Freedom of Expression.

34. The Competition Commission, too, has recognised the role that community networks can play in providing cheaper – or even free – data services at different geographic places.[37] The Competition Commission noted further that:[38]

> "Cheaper prices are important in themselves, but the Commission is also of the view that this infrastructure [public data services and community networks] can be an alternative source of competitive pressure on mobile data services to bring those prices down. This is largely because fixed line services are typically provided through Wi-Fi at the point of use, and hence available for smartphones to connect to. However, such competitive pressure is only likely to occur if these services are far more pervasive (to give more opportunity for off-load), and if they also have reach into poorer communities which currently have no options outside of mobile and are being exploited as a result."

35. With specific reference to community networks, the Competition Commission called on ICASA to consider models and regulatory changes to allow at least non-profit community networks, and possibly small commercial enterprises, to access licensed spectrum not used by mobile operators in rural areas in a similar manner to TV white space.[39]

36. Drawing on the resources referenced above, we submit that the recommendations in the Draft Paper should include the following:

    36.1. Appropriate models and regulatory changes should be considered and adopted to allow community network providers to access spectrum.

    36.2. The relevant authorities should create licence exemption provisions, or lessen the administrative burden, for small operators, not-for-profit operators and other actors interested in providing affordable access in localised geographic areas.

    36.3. The relevant authorities should provide special spectrum allocations – either primary assignment or allowing secondary use of assignment that is idle – to those interested in serving the unconnected in remote populations.

Public access approaches

37. As mentioned above, a key aspect of the Seven-Point Plan pertains to public access. We understand the term "public access" to refer to facilities that allow any member of the public to make use of computers with a broadband connection, along with associated ICT tools, such as printers, as well as support for using the internet.[40] In our view, public access provides an opportunity for persons who are not connected to the internet to make

---

[37] Competition Commission, 'Data Services Market Inquiry: Summary of findings and recommendations' (2019) at para 37.
[38] Id at para 38.
[39] Id at para 55.3.
[40] APC, 'Public access: Supporting digital inclusion for all' (2014) at p 1.

meaningful use of the benefits that it can offer, such as becoming more economically active and productive, learning and applying new skills, and enriching their cultural identity.[41]

38. We therefore support the recommendation in the Draft Paper to develop complimentary public access approaches, such as free public wi-fi extension to rural areas to deal with extreme digital inequality. With regard to free public wi-fi, there are multiple benefits: it enables users to save on data charges and enables people without internet access to do research, search for jobs, connect to social media and access relevant content; however, there are also downsides, including that the need to have an appropriate device, the risk of vulnerabilities to cybercrimes and the requirement to provide personal data in exchange for accessing the wi-fi. As set out in the Seven-Point Plan, there are various considerations in the rollout of free public wi-fi:[42]

   38.1. **Determining the allocation of free wi-fi:** Several considerations arise in this regard. First, consideration will need to be given to the capacity of the network and the budget available to provide the free public wi-fi. Further, this will also depend on how many hotspots are being installed and how many users might be expected on the network at an average time. Importantly, regard should also be had to the socio-economic conditions of the community being served and the availability of other means of internet access. In this regard, indigent or rural communities that may depend on the free public wi-fi to access the internet should be considered as priorities and provided with appropriate tranches to meaningfully exercise their online rights.

   38.2. **Consistency in the service provision:** It is imperative that, if free public wi-fi is offered, every effort should be made to ensure that this is done on a consistent and reliable basis. This fosters certainty and builds trust among the community being served. Persons may be dependent on access to the internet through the free public wi-fi for educational or business purposes, and should be entitled to rely on its available consistently. Further, the service should be of an appropriate upload and download speed, taking into consideration the number of users expected to access the wi-fi hotspot, as unduly slow speeds would not constitute meaningful and effective access.

   38.3. **Zero-rated content portals and access to government websites:** This aspect of the seven-point plan dovetails with other aspects. Notably, regard should be had to providing users of the free public wi-fi with zero-rated access to content portals and government information. In other words, the free wi-fi allocation should not be depleted by accessing the content portals and the government websites; rather, users should be able to freely browse these websites as extensively as they may wish, and be directed towards this relevant content without having to make an election over other websites that they would otherwise want to search.

---

[41] Seven-Point Plan at p 26.
[42] Id at pp 40-41.

38.4. **Avoidance of data exploitation:** The provision of free public wi-fi should not come at the cost of data exploitation. User data should remain protected in line with appropriate safeguards and data protection laws. The service cannot truly be considered free if the user's data is being exchanged and exploited for that person to be able to access the internet. Regard should be had to the unequal bargaining power of users, particularly those who cannot otherwise access the internet but for the provision of the free service, and the invidious position in which the user is placed in being required to provide their personal information in order to be able to get online.

38.5. **Appropriate security measures:** A public wi-fi network is inherently less secure than a private network, given the ease with which anyone – including potential hackers and cybercriminals – can connect to it. As such, appropriate safeguards and security measures should be put in place on the wi-fi network to protect users, particularly those who may have low levels of digital literacy.

38.6. **Corporate accountability:** For the government department engaging in the procurement process, it is imperative that the correct procedures are followed, and that there are not procedural or substantive irregularities in the procurement processes. There should be openness and transparency in the procurement and implementation processes. The requirements and obligations should be made clear to the private sector service provider, and be rigorously enforced by the government department.

39. In addition to this, and in line with the Seven-Point Plan, we propose three measures that we submit should be incorporated in this recommendation in the Draft Paper:

39.1. **Free public access at government sites:** Public access at government sites assists persons in overcoming challenges such as high costs, lack of devices with internet connectivity or lack of electricity. It may also be more safe and secure than public places. Our proposal in this regard is that one should be able to connect to the wi-fi at a government facility using one's own device, as well as the availability of public devices that can be used by persons who do not have appropriate devices of their own.

39.2. **Investment in libraries, telecentres and community centres:** For people who cannot afford their own devices and connectivity, facilities such as libraries, telecentres and community centres can be a much-needed alternative; however, investment in such facilities appears to have fallen off the agenda.[43] Given the central role that these facilities could play in many communities, taking into account their location and accessibility, investment should be encouraged in such facilities to promote access to the internet.

---

[43] Id at p 27.

39.3. **Provision of free basic internet:** In our view, an obvious parallel can be drawn between the basic municipal services that are currently offered, with access to the internet which has become indispensable to the rights contained in the Constitution. We submit that a tranche of free basic internet should be provided to all qualifying persons, which may be determined based on financial need and the dependence on other forms of social support. Specifically, it would be prudent to tailor the service offering to the most vulnerable and indigent members of the population, who qualify in terms of the means test for other basic municipal services. As set out in the Seven-Point Plan, we submit that 1Gb of data per month would be an appropriate allocation to enable communications, web browsing and other online activities.

40. We further submit that universal service access funds should be appropriately applied to promote public access measures and the provision of free basic internet to qualifying persons.

Regulation

41. There has been long-standing consternation at the delays in digital migration and the release of high-demand spectrum, and the impact that this has on the sector and access to the internet for the broader public. We therefore submit that:

41.1. **Need for clear policy guidance:** It is essential for the existing regulatory uncertainty to be resolved as a matter of urgency, and clear policy guidance be provided by the relevant stakeholders as may be expected in the short-, medium- and long-term. While the publication of the Policy Direction on Unassigned High Demand Spectrum (the Policy Direction) was initially a welcome step, the Policy Direction has left many questions about the implementation of the Wholesale Open Access Network (WOAN) and the allocation of 5G spectrum bands. As such, the Policy Direction has failed to provide the overarching policy certainty that it was anticipated it would offer, exacerbated by the time lag in any follow-up and implementation thereof.

41.2. **Role of ICASA:** We stress that it is imperative that the role of ICASA, as the independent regulator responsible for the telecommunication sector, be safeguarded against any undue interference, and that measures are taken to ensure that it is structurally and fiscally independent. Policy determinations regarding the allocation of spectrum should clearly vest within the remit of ICASA, as this is necessary to ensure that ICASA is able to perform its functions independently and without interference, as well as to facilitate the desired policy certainty by ensuring that the relevant responsibilities are designated and assigned.

41.3. **Socio-economic impact assessment:** In the development of any regulatory or policy interventions, it is important that a socio-economic impact assessment is compiled before making any final determinations. The purpose of this would be to: (i) minimise unintended consequences from policy initiatives, regulations and legislation, including unnecessary costs from implementation and compliance as well as from unanticipated outcomes; and (ii) anticipate implementation risks and encourage measures to mitigate them. This assessment should include relevant economic-related aspects that provide insight into whether the proposed regulatory measure will have a positive impact on economic growth and development for the broader population.

42. In our submission, these considerations should be incorporated into the recommendations section of the Draft Paper when dealing with the issue of regulation.

Data governance and justice

43. We welcome the observation in the Draft Paper that an integrated data governance framework, within the context of the Bill of Rights, will be essential to developing the trusted framework required for people to use online services. We also agree that the development and implementation of data and privacy protection, cybersecurity, cybercrime and anti-surveillance will need to take central stage as far as governance of digital infrastructure is concerned.

44. That said, drawing on the African Declaration on Internet Rights and Freedoms, we submit that the recommendations regarding digital infrastructure should also recognise the following:[44]

44.1. **Openness:** The internet should have an open and distributed architecture, should guarantee interoperability so as to enable a common exchange of information and knowledge. Opportunities to share ideas and information on the internet are integral to promoting freedom of expression, media pluralism and cultural diversity. Open standards support innovation and competition, and a commitment to network neutrality promotes equal and non-discriminatory access to and exchange of information on the internet.

44.2. **Network neutrality:** The Draft Paper should expressly recommend that the principle of network neutrality be firmly entrenched within any data governance framework. In accordance with the principle of network neutrality, all data on the internet must be treated in an equal and non-discriminatory manner, and should not be charged differentially, according to user, content, site, platform, application, type of attached equipment or modes of communication.

---

[44] Principles 1 and 9, respectively, of the African Declaration on Internet Rights and Freedoms.

44.3. **Security and resilience of the internet:** Everyone should have right to benefit from security, stability and resilience of the internet. As a universal global public resource, the internet should be a secure, stable, resilient, reliable and trustworthy network. Different stakeholders should continue to cooperate in order to ensure effectiveness in addressing risks and threats to security and stability of the internet. Unlawful surveillance, monitoring and interception of users' online communications by state or non-state actors fundamentally undermine the security and trustworthiness of the internet.

45. We submit that the incorporation of these provisions will serve to foster trust and security in accessing the internet, and enable it to serve as a resource to be enjoyed by all.

Human development

<u>Digital literacy skills</u>

46. Digital literacy is an imperative in any strategy informing the 4IR, and is one of the points set out in the Seven-Point Plan. At present, a lack of digital literacy is emerging as a significant barrier to internet use, which requires a range of competencies including finding, evaluating and managing information online; interacting, sharing and collaborating online; developing and creating content; safely using protection features; and knowing how to solve problems and be creative. This includes making informed choices regarding the personal content they communicate, understanding the importance of privacy and avoiding risk, all while exercising their right to freedom of expression online.[45] As MMA has previously noted:[46]

> "Digital literacy can simply be understood as a set of necessary skills for using the internet. It can enable participation and information sharing. It also denotes a range of professional computing skills. Notably, digital literacy equips an individual with the 'capability to achieve other valued outputs in life, especially in the modern digital economy.' Being digitally literate is crucial for employability and is a core enabler of economic transformation. In addition to these elements, digital literacy also empowers people to look after their digital footprint, stay safe online and also know and understand how to deal with some of the possible dangers of being online."

47. We submit that the recommendations in the Draft Paper should expressly outline the need to develop the following key competencies:[47]

47.1. Access and operate in digital environments safely and effectively.

47.2. Critically evaluate information.

---

[45] UNICEF, 'Children's online privacy and freedom of expression' (2018).
[46] MMA, Submissions on Draft National Youth Policy for 2020-2030' (2020).
[47] UNICEF, above n 45.

47.3.   Communicate safely, responsibly and effectively through digital technology.

47.4.   Create digital content.

47.5.   Respect others online.

47.6.   Participate online and contribute to online civic engagement.

48.   In order to reach these competencies, digital literacy skills must be integrated into the school curriculum at an early stage. Additional projects must be implemented to teach coding skills to children, including the integration of coding in national school curriculum, the creation of outside-school coding clubs, or the distribution of low-cost computers with preloaded courses and applications. Furthermore, actions need to be taken to foster other appropriate digital skills, including digital safety, the ability to engage with media content and spot disinformation, and an awareness of how technology, big data and algorithms shape society.

49.   One such initiative is the Web Rangers programme,[48] which is being implemented by MMA together with MTN, Google and Facebook. Web Rangers is a digital literacy programme designed to allow young people to gain critical skills and knowledge around online safety that they can use to create innovative campaigns to promote safe internet usage and champion their rights in the digital world. The programme is about creating young digital citizens who know how to use the internet responsibly and encourage their peers to do the same.

Prioritisation of vulnerable or marginalised groups

50.   There are various instruments that recognise the importance of having particular regard to the needs of vulnerable or marginalised groups in the provision of access to the internet. For instance:

50.1.   **Specific measures:** The Declaration on Freedom of Expression provides that: "States shall take specific measures to address the needs of marginalised groups in a manner that guarantees the full enjoyment of their rights to freedom of expression and access to information on an equal basis with others. Marginalised groups include women, children, persons with disabilities, older persons, refugees, internally displaced persons, other migrants, ethnic, religious, sexual or gender minorities."[49]

---

[48] Accessible at https://webrangers.co.za/.
[49] Principle 7 of the Declaration on Freedom of Expression.

50.2. **Evolving capacities of children:** The Declaration on Freedom of Expression further provides that: "States shall recognise and respect the evolving capacities of children, and shall take measures that enable children, including adolescents, to exercise the rights to freedom of expression and access to information. In all such actions, the best interest of the child shall be a primary consideration."[50]

50.3. **Marginalised groups and groups at risk:** The African Declaration on Internet Rights and Freedoms provides that: "The rights of all people, without discrimination of any kind, to use the internet as a vehicle for the exercise and enjoyment of their human rights, and for participation in social and cultural life, should be respected and protected."[51] The Declaration on Freedom of Expression also provides that: "In providing access to the internet, states shall take specific measures to ensure that marginalised groups have effective exercise of their rights online."[52]

50.4. **Gender equality:** The African Declaration on Internet Rights and Freedoms further provides that: "To help ensure the elimination of all forms of discrimination on the basis of gender, women and men should have equal access to learn about, define, access, use and shape the Internet. Efforts to increase access should therefore recognise and redress existing gender inequalities, including women's under-representation in decision-making roles, especially in Internet governance."[53]

51. We submit that the recommendations in the Draft Paper should specifically include measures to address the needs of vulnerable or marginalised groups – including women, children, elderly persons, persons with disabilities, and persons living in rural areas – to ensure that the benefits of the 4IR are enjoyed by society as a whole, and do not result in discriminatory benefits.

Bridging the digital divide

52. Human development is about more than skills development. While the recommendations in the Draft Paper allude to the need to bridge the digital divide, we submit that the recommendations regarding human development should deal with this issue directly. It is undeniable that the internet has the significant potential to improve the lives of people in South Africa, including by enabling them to seek education, access to healthcare, work opportunities and other forms of relevant information. As affirmed in the African Declaration on Internet Rights and Freedoms: "Access to the internet plays a vital role in the full realisation of human development, and facilitates the exercise and enjoyment of a number of human rights and freedoms".[54] The need to realise these forms of human development should be expressly referred to in the report.

---

[50] Principle 8 of the Declaration on Freedom of Expression.
[51] Principle 10 of the African Declaration on Internet Rights and Freedoms.
[52] Principle 37(4) of the Declaration on Freedom of Expression.
[53] Principle 13 of the African Declaration on Internet Rights and Freedoms.
[54] Principle 2 of the African Declaration on Internet Rights and Freedoms.

53. The issue of bridging the digital divide is inextricably linked to the question of affordability. South Africa remains one of the most unequal countries in the world, and the cost of access lies beyond the reach of many persons in the country. This is affected by factors such as levels of employment, education, poverty, literacy and geographic location. Access to the internet should be available and affordable to all persons in the country, without discrimination on any ground.

54. In this regard, we propose the following:

54.1. **Strategies and regulatory measures:** The relevant authorities and other stakeholders should use existing strategies, and develop new strategies and regulatory measures, to increase internet access for digitally excluded communities, or those with limited connectivity.[55]

54.2. **Measures to reduce the price of connectivity:** Mobile operators, internet service providers and other relevant stakeholders should consider measures to reduce the price of connectivity, including through the provision of discounted data, special affordable packages for low-income groups and the subsidisation of devices.[56]

54.3. **Internet exchange points:** There should be support for the establishment of national and regional internet exchange points to rationalise and reduce the cost of internet traffic at national, local and sub-regional levels.[57]

55. We submit that it is crucial for the recommendations in the Draft Paper to deal directly with the issue of bridging the digital divide, particularly for vulnerable or marginalised groups, to ensure that the implementation of the Draft Paper duly caters for the imperative that this presents.

Digitalisation of the public sector

56. While we agree in broad terms with the recommendation regarding the digitalisation of the public sector, we emphasise that this process should not be exclusionary to those persons who do not have access to the internet. As such, while access to government services online can save time and resources for many persons, alternatives must still be provided to those who are unable to access these online platforms. It is also important that there is appropriate support and assistance provided to persons who seek to use the online platforms, but may have difficulties in doing so.

---

[55] AfDec Coalition, above 35 at p 6.
[56] Id at p 7.
[57] Principle 2 of the African Declaration on Internet Rights and Freedoms.

57. Furthermore, this applies similarly to government information. While it is important and necessary for information regarding government services to be made available online, the same information should also be made available in other formats and mediums to persons who do not have access to the internet. This will serve to ensure that people are not excluded from access government services if they do not have access to the internet.

Open data

Open data commitments

58. Open government data contributes to a more open, transparent and accountable public sector, and plays a key role in the realisation of our constitutional values and the Sustainable Development Goals. As has been noted by the United Nations, "[o]pen government data is significantly increasing transparency leading to increased accountability and trust in governments and public institutions. Publicly available and reusable open data is fuelling participation and collaboration among actors in the public, private and civil society sectors. It is also helping to improve service delivery in many sectors crucial to sustainable development such as education, health, environment, social protection and welfare and finance."[58] Open data can be considered as such when information is released in a machine-readable format, without any legal barriers to access, is accessible free of charge, and is widely available.[59]

59. While the Draft Paper refers briefly to the need for an open data policy, we submit that this is an issue that should be expanded on. In particular, the Draft Paper should explain what should be contained in such an open data policy, drawing from regional and international best practices, including the African Platform on Access to Information[60] (APAI). Furthermore, the recommendations in the Draft Paper should call on South Africa to honour its commitments in terms of the Open Government Partnership.[61]

Zero-rating of content in the public interest

60. In line with the Seven-Point Plan, as well as with reference to the principle of open data, we submit that once the government has made the relevant information and services available on its websites, the next step is to ensure that users can access this for free. This would allow for unlimited, no-cost access to certain information and services in the public interest. In our view, it is insufficient to make government information and services available on government websites if the public lacks the resources to be able to access this.

---

[58] United Nations, 'e-Government Survey 2018' (2018) at p 107.
[59] Id at p 109.
[60] Accessible at http://www.africanplatform.org/fileadmin/Content/PDF/APAI-Declaration-English.pdf.
[61] Accessible at https://www.opengovpartnership.org/documents/south-africas-third-national-action-plan-2016-2018/.

61. Accordingly, we submit that the recommendations in the Draft Paper should propose that government websites containing information and services in the public interest should be zero-rated. This may further require the relevant government departments to enter into appropriate agreements with the private sector, as well as to develop a clearly defined list of the information and services that are to be zero-rated.

Reform of the Promotion of Access to Information Act

62. Further to the principle of open data, we submit that there is an urgent need for the Promotion of Access to Information Act 2 of 2000 (PAIA) to be reformed in line with principles of open data and the exigencies of the current digital era. Drawing on the Declaration on Freedom of Expression, we submit that this should include the following:[62]

    62.1. **Maximum disclosure:** PAIA should be guided by the principle of maximum disclosure. The right of access to information should only be limited by narrowly defined exemptions, which should strictly comply with international human rights law and standards.

    62.2. **Primacy:** PAIA should take precedence over any other laws that prohibit or restrict the disclosure of information.

    62.3. **Proactive disclosure:** While PAIA provides for voluntary disclosures, it lacks specificity and enforcement. Public and private bodies should be required, even in the absence of a specific request, to proactively publish information in the public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities.

    62.4. **Dissemination:** Information required to be proactively disclosed should be disseminated through all available mediums, including digital technologies. In particular, the state should proactively publish information in accordance with accepted open data principles.

    62.5. **Duty to create, keep, organise and maintain information:** Public and private bodies should create, keep, organise and maintain information in a manner that facilitates the exercise of the right of access to information.

    62.6. **Accessibility:** Access to information should be granted as expeditiously as possible, and in accessible formats and technologies.

63. We submit that the reform of PAIA is central to the realisation of the principle of open data in South Africa, and urge the drafters to include a recommendation calling for such reform. It is of key importance that PAIA be updated to ensure that it is fit-for-purpose in the 4IR, which requires there to be the appropriate facilitation of access via online platforms. However, this can only meaningfully realise the right of access to information if the public

---

[62] Principles 26, 27, 28, 29, 30 and 31 of the Declaration on Freedom of Expression.

has universal access to the internet to be able to engage with the information being made available online. In this regard, we reiterate the Declaration on Freedom of Expression insofar as it calls to states to recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights.[63]

Global governance

64. There are presently a number of challenges with global governance that need to be addressed. One of the key concerns is the lack of civil society representation at such fora, particularly from global south countries. As such, we submit that the recommendations in the Draft Paper should call on the government to support local and regional civil society actors working on issues of internet governance to engage in appropriate fora. This includes by convening domestic, sub-regional and regional internet governance fora, and by providing financial and technical support to civil society actors to participate at the international level.

ADDITIONAL RECOMMENDATIONS TO BE INCLUDED IN THE DRAFT PAPER

65. Having had regard to the European strategy for the digital future,[64] we propose that there are three additional recommendations that should be included in the Draft Paper: (i) fighting disinformation and fostering diverse media content; (ii) artificial intelligence and machine learning; and (iii) climate change. These are dealt with in turn below.

Fighting disinformation and fostering diverse media content

66. Disinformation relates to verifiably false or misleading information created, presented and disseminated for economic gain or to intentionally deceive the public.[65] It may have far-reaching consequences, cause public harm, be a threat to democratic political and policy-making processes, and may even put the protection of the public's health, security and environment at risk. Disinformation erodes trust in institutions, as well as in the media, and harms democracy by hampering the ability of the public to take informed decisions. It can polarise debates, create or deepen tensions in society, undermine electoral processes, and impair freedom of opinion and expression.

67. While disinformation is not in itself a new concept, it has been amplified through social media and other online platforms. According to the European Commission, the mechanics for the proliferation of disinformation are as follows:[66]

---

[63] Principle 37(2) and (3) of the Declaration on Freedom of Expression.
[64] Accessible at https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/shaping-europe-digital-future_en.
[65] European Commission, 'Tackling online disinformation' (undated).
[66] European Commission, 'Tackling online disinformation: A European approach' (2018) at p 5.

67.1. **Algorithm-based:** The criteria algorithms use to prioritise the display of information are driven by the platforms' business model and the way in which this privileges personalised and sensational content, which is normally most likely to attract attention and to be shared among users. By facilitating the sharing of personalised content among like-minded users, algorithms indirectly heighten polarisation and strengthen the effects of disinformation.

67.2. **Technology-enabled:** Online technologies, such as automated services (referred to as "bots"), artificially amplify the spread of disinformation. These mechanics can be facilitated by simulated profiles (fake accounts) which have no authentic user behind them, sometimes orchestrated on a massive scale (referred to as "troll factories").

68. In an effort to address disinformation in South Africa, MMA has launched the Real411 platform, which is a publicly-accessible platform that enables members of the public to report concerns of disinformation online.[67] The platform seeks to strike an appropriate balance between the right to freedom of expression and the need to tackle disinformation online. All relevant complaints are reviewed by three reviewers – one with technical expertise, one with legal expertise, and one with media expertise – as well as a member of the secretariat who is responsible for finalising the complaint in line with the stipulated criteria. It is founded on the principles of transparency and accountability, and includes an appeals mechanism for anyone who is dissatisfied with the outcome.

69. We submit that the recommendations to the Draft Paper should expressly recognise the need to address disinformation as part of the overall strategy regarding the 4IR. This should be underpinned by the following overarching principles and objectives:[68]

69.1. **Transparency:** To improve transparency regarding the origin of information and the way it is produced, sponsored, disseminated and targeted in order to enable the public to assess the content they access online and to reveal possible attempts to manipulate opinion.

69.2. **Diversity:** To promote diversity of information, in order to enable citizens to make informed decisions based on critical thinking, through support to high quality journalism, media literacy, and the rebalancing of the relation between information creators and distributors.

69.3. **Credibility:** To foster credibility of information by providing an indication of its trustworthiness, notably with the help of trusted flaggers, and by improving traceability of information and authentication of influential information providers.

---

[67] Accessible at https://www.real411.org/.
[68] European Commission, above n 66 at p 6.

69.4. **Inclusivity:** To fashion inclusive solutions. Effective long-term solutions require awareness-raising, more media literacy, broad stakeholder involvement and the cooperation of public authorities, online platforms, advertisers, trusted flaggers, journalists and media groups.

70. It is crucial to the fight against disinformation that there is support for quality journalism as an essential element of a democratic society. As explained by the European Commission, "[i]n an evolving digital environment, there is a need to invest in high quality journalism, reinforce trust in the key societal and democratic role of quality journalism both offline and online, and encourage quality news media to explore innovative forms of journalism.[69] This is consonant with the Declaration on Freedom of Expression, which requires states to take positive measures to promote a diverse and pluralistic media.[70]

71. However, as explained by SANEF, the present reality is that the COVID-19 pandemic has left the news industry desperately looking for new ways of sustaining itself, while audience demands for timely, credible but free news surges.[71] SANEF notes further that: [72]

> "Some of the ills of the news media will not wane with the crisis, such as the conundrum of print publishers migrating to a less profitable online environment, and the damage wrought by the change in news media business models and the problem of Google and Facebook soaking up the lion's share of online advertising revenue. In any event, the crisis has shown the need for thinking about emergency funding for the news media in the short term and sustainable funding models as it adapts to the new digital realities of the 21st century in the long-term – and the world after the coronavirus."

72. We therefore urge that the recommendations in the Draft Paper include provisions relating to the need to tackle disinformation in the 4IR, the importance of fostering the media to provide diverse and reliable media content as part of the strategy of responding to disinformation, and universal access to public interest news services. The state has a key role to play in supporting the media by providing appropriate resourcing to supplement other forms of revenue. Indeed, a well-functioning, free and pluralistic information ecosystem, based on high professional standards, in indispensable to a healthy democratic debate.[73]

Artificial intelligence and machine-learning

73. Artificial intelligence and machine-learning are central to the 4IR. These technological advancements have made the 4IR starkly different from previous industrial revolutions, primarily due to the speed and scope with which the developments have taken place. Artificial intelligence and machine-learning present many opportunities: the public can reap new benefits, such as improved healthcare, fewer breakdowns of household

---

[69] Id at p 14.
[70] Principle 11(3) of the Declaration on Freedom of Expression.
[71] SANEF, 'COVID-19 impact on journalism report: Interim' (2020) at p 3.
[72] Id at p 4.
[73] European Commission, above n 66 at p 16.

machinery, safer and cleaner transport systems and better public services; business can achieve development through the generation of new products and services; and there can be an improvement in services of public interest, such as by reducing costs of providing services, improving the sustainability of products and equipping law enforcement agencies.[74] The use of artificial intelligence can also have a significant role in achieving the Sustainable Development Goals, and in supporting democratic processes and social rights.[75]

74. However, there are also risks incumbent with these technologies. As part of the recommendations in the Draft Paper, we submit that it is necessary to deal specifically with the importance of ensuring that artificial intelligence serves to the benefit – not detriment – of society. In this regard, the deployment of an artificial intelligence technology needs to meet the following criteria: (i) lawful, with regard to respecting all applicable laws, including the Constitution; (ii) ethical, with regard to respecting ethical principles and values; and (iii) robust, both from a technical perspective while taking into account its social environment.[76] The European Commission has also developed a set of seven key requirements that artificial intelligence systems should meet in order to be deemed trustworthy:[77]

74.1. **Human agency and oversight:** Artificial intelligence systems should empower human beings, allowing them to make informed decisions and fostering their fundamental rights. At the same time, proper oversight mechanisms need to be ensured, which can be achieved through human-in-the-loop, human-on-the-loop, and human-in-command approaches.

74.2. **Technical robustness and safety:** Artificial intelligence systems need to be resilient and secure. They need to be safe, ensuring a fall-back plan in case something goes wrong, as well as being accurate, reliable and reproducible. That is the only way to ensure that also unintentional harm can be minimised and prevented.

74.3. **Privacy and data governance:** Besides ensuring full respect for privacy and data protection, adequate data governance mechanisms must also be ensured, taking into account the quality and integrity of the data, and ensuring legitimised access to data.

74.4. **Transparency:** The data, system and artificial intelligence business models should be transparent. Traceability mechanisms can help achieving this. Moreover, artificial intelligence systems and their decisions should be explained in a manner adapted to the stakeholder concerned. Humans need to be aware that they are interacting with an artificial intelligence system, and must be informed of the system's capabilities and limitations.

---

[74] European Commission, 'White paper on artificial intelligence: A European approach to excellence and trust' (2020) at p 2.
[75] Id.
[76] European Commission, 'Ethics guidelines for trustworthy AI' (2019).
[77] Id.

74.5. **Diversity, non-discrimination and fairness:** Unfair bias must be avoided, as it could have multiple negative implications, from the marginalisation of vulnerable groups, to the exacerbation of prejudice and discrimination. Fostering diversity, artificial intelligence systems should be accessible to all, regardless of any disability, and involve relevant stakeholders throughout their entire life circle.

74.6. **Societal and environmental well-being:** Artificial intelligence systems should benefit all human beings, including future generations. It must therefore be ensured that they are sustainable and environmentally friendly. Moreover, they should take into account the environment, including other living beings, and their social and societal impact should be carefully considered.

74.7. **Accountability:** Mechanisms should be put in place to ensure responsibility and accountability for artificial intelligence systems and their outcomes. Auditability, which enables the assessment of algorithms, data and design processes plays a key role therein, especially in critical applications. Moreover, adequate an accessible redress should be ensured.

75. Other relevant frameworks that can also be considered include the application of the ROAM principles to artificial intelligence, which explore how the ROAM principles can steer the development and usage of artificial intelligence from the dimensions of human rights, openness, inclusive access, multi-stakeholder governance and cross-cutting issues;[78] and the Toronto Declaration, which sets out the protection of the right to equality and non-discrimination in machine-learning systems.[79]

76. We submit that it would be remiss for the recommendations in the Draft Paper not to deal with the development and deployment of artificial intelligence and machine-learning, the need for a rights-based approach in this regard, and the importance of developing appropriate frameworks to safeguard the rights of affected persons.

Climate change

77. As explained by the World Economic Forum:[80]

> "Human well-being is intertwined with the environment. From local communities to the global commons, the environment provides natural resources that fuel the growth of industries and economies and influences public issues as diverse as health, natural disaster response and recovery, and food and energy security. With the planet increasingly under stress, action on environmental issues – such as climate change, biodiversity, and ocean health – constitute some of the most urgent and large-scale challenges. The innovations of the Fourth Industrial Revolution (4IR) hold great potential for improving management and governance

---

[78] UNESCO, 'Steering AI and advanced ICTs for knowledge society: A rights, openness, access and multi-stakeholder perspective' (2019).

[79] Accessible at https://www.accessnow.org/cms/assets/uploads/2018/08/The-Toronto-Declaration_ENG_08-2018.pdf.

[80] World Economic Forum, 'Fourth Industrial Revolution for the Earth' (undated).

of the global environment and delivering the systems change required to create clean, resource-secure and inclusive economies."

78. According to the European digital strategy, this aims to use technology to help Europe become climate neutral by 2050, and to reduce the digital sector's carbon emissions. In this regard, the European Commission estimates that technology could help reduce emissions by seven times more than the amount created by the ICT sector, and reduce global emissions by up to 15%.[81] It is noted further that artificial intelligence, supercomputing and pooled data will allow better analysis and decision-making on the climate crisis and the environment, which will in turn lead to better policy-making.

79. As part of the digital strategy to help Europe become climate neutral, the following steps will be taken:[82]

   79.1. **Launch a new industrial strategy:** In March 2020, the European Commission was scheduled to adopt a European Union (EU) industrial strategy to support the green and digital transformation of the EU economy.

   79.2. **Boost the EU's ability to predict and manage environmental disasters:** The 'Destination Earth' initiative will develop a high precision digital model of the Earth that will improve Europe's ability to predict extreme weather patterns, gauge the impact of climate change and manage natural and environmental disasters.

   79.3. **Support the circular economy:** This will include taking measures to improve the energy efficiency and circular economy performance of the ICT sector, from broadband networks to data centres and ICT devices. It will further include new 'product passports' to tell consumers and industry about the origin, composition, end-of-life handling and recycling of products.

   79.4. **Launch a circular electronics initiative:** This will include improving rules to make devices last longer and to make them easier to repair. According to the European Commission, extending the lifetime of all smartphones in the EU by one year would save 2.1 million tonnes of CO_2 per year by 2030, which would be the equivalent of taking 1 million cars off the road.

   79.5. **Make data centres and ICT infrastructure climate-neutral by 2030:** This will include ensuring that they become more energy efficient and use more renewable energy sources.

   79.6. **Take advantage of artificial intelligence, 5G, cloud and edge computing and the Internet of Things:** This will ensure that digital technologies are used to deal with climate change and protect the environment.

---

[81] European Commission, 'Supporting the green transition' (2020) at p 1.
[82] Id at pp 2-3.

79.7. **Support automated and connected transport:** Smart systems will be developed to reduce traffic congestion and improve mobility.

79.8. **Make public procurement more sustainable:** This will ensure that EU rules on green public procurement cover all ICT products and services.

80. We submit that the recommendations in the Draft Paper should similarly call for considerations of climate change to be integrated into the 4IR strategy, both to harness the potential that the 4IR can offer and to mitigate against the negative effects that the ICT sector may have.

CONCLUDING REMARKS

81. In conclusion, we recognise the extensive work that has gone into preparing the Draft Paper, and appreciate the opportunity to provide this submission. We remain available to provide any further information, as well as to participate in any future engagements relating to the Draft Paper, including through oral submissions should the opportunity be made available. Please do not hesitate to contact us if we can be of assistance.

[Ends.]