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TO: THE DEPARTMENT OF BASIC EDUCATION
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SUBMISSION BY MEDIA MONITORING AFRICA:

**PROPOSED AMENDMENTS TO THE REGULATIONS RELATING TO THE MINIMUM UNIFORM
NORMS AND STANDARDS FOR PUBLIC SCHOOL INFRASTRUCTURE**

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INTRODUCTION

1. Media Monitoring Africa (“**MMA**”) welcomes the opportunity to provide this submission to the Department of Basic Education (“**DBE**”) on the proposed amendments to the Regulations Relating to the Minimum Uniform Norms and Standards for Public School Infrastructure (“**Draft Norms and Standards**”).
2. MMA notes at the outset that there are serious concerns around the proposed amendments to the provisions relating to the implementation of the Norms and Standards – most notably the proposed removal of deadlines. MMA is concerned that this departure from the current Regulations Relating to the Minimum Uniform Norms and Standards for Public School Infrastructure (“**Current Norms and Standards**”) removes important accountability mechanisms.¹ Of further concern to MMA is the apparent lack of inclusion of electronic connectivity in the provisions relating to implementation. Both concerns have implications for the rights of learners in South Africa, including the best interests of the child, the right to basic education, the right to access information, and the right to freedom of expression, among others.
3. MMA, therefore, urges the DBE to urgently reconsider the proposed amendments to the Norms and Standards, so as to reintroduce deadlines for implementation and ensure that electronic connectivity is provided when it comes to detailing implementation.
4. Having had regard to the Draft Norms and Standards, these submissions are dealt with in two parts: the importance of accountability in a constitutional democracy; and the importance of electronic connectivity as an enabler of the right to basic education and other fundamental rights. MMA draws on international, regional, and constitutional principles to inform its submissions. Accordingly, this submission is structured as follows:
 - 4.1. **First**, we provide an overview of MMA;
 - 4.2. **Second**, we emphasise the importance of deadlines and accountability when it comes to implementation as well as the requirement on states to diligently, and without delay perform their constitutional duties; and
 - 4.3. **Third**, we highlight the urgent need to ensure that electronic connectivity forms part of the DBE’s priorities and that clear guidance is provided on the implementation of electronic connectivity in all schools.
5. These are dealt with in turn below.

OVERVIEW OF MEDIA MONITORING AFRICA

6. MMA is a not-for-profit organisation that has been monitoring the media since 1993. MMA is an active member of the South African civil society space and works alongside an array of civil society organisations to promote a culture of human rights. MMA also engages in a

¹ Relating to the Minimum Uniform Norms and Standards for Public School Infrastructure (2013).

range of legislative and litigious processes relating to the rights to freedom of expression and access to information (“**expressive rights**”).

7. MMA recognises that access to the internet is a key enabler of an array of rights inclusive of education and expressive rights. In this regard, MMA participated in a joint effort with the Association for Progressive Communications, the Interactive Advertising Bureau of South Africa, and the South African National Editors’ Forum, in the development of a seven-point plan regarding how to achieve universal access to the internet in South Africa.²
8. Alongside expressive rights and access and connectivity, over the last two decades MMA, has worked extensively with children to advance their rights and freedoms, recognising that children’s expressive rights are paramount to the realisation of their best interests.
9. MMA has pioneered efforts toward meaningful children’s participation. We have empowered children through media literacy workshops, providing editorial guidelines and principles for the reporting of children in the media. Additionally, we have, on behalf of and with children, made parliamentary submissions, submissions to various Ministries, and submissions to the United Nations (“UN”) Committee on the Rights of the Child.³ In addition to these activities, MMA engages in strategic litigation on a range of expressive rights and children’s rights-related issues.⁴
10. Further, MMA is actively involved in grappling with the applicability of children’s rights online. MMA works directly with young digital citizens, Web Rangers, who are advancing their critical skills and knowledge around online safety in order to create innovative campaigns that promote safe internet usage and champion their rights in the digital world.⁵ Web Ranger participants have contributed to the drafting of a Digital Rights Charter that seeks to give effect to an internet that is accessible, safe and empowering, and that advances the development of children in line with their rights and interests.⁶ Notably, access to the internet and meaningful connectivity emerged as central issues for the learners, and as central themes during the drafting of the Digital Rights Charter.
11. MMA has also engaged directly with issues relating to internet access and the right to basic education in South Africa. MMA, along with the Global Human Rights Clinic at the University of Chicago Law School, ALT Advisory, and Acacia Economics, published the “Access Denied” report which shed light on the reality of internet access in schools in South Africa and offers recommendations as to how this can be improved.⁷

² MMA, et al, ‘Universal Access to the Internet and Free Public Access in South Africa: A Seven-Point Implementation Plan’ (2019) (accessible at: <https://internetaccess.africa/wp-content/uploads/2019/10/UA-Report.pdf>). The report was endorsed by the African Centre of Excellence for Information Ethics University of and the Centre for Human Rights.

³ In addition to these activities MMA engages in strategic litigation on a range of media freedom and children’s rights related issues. MMA also runs a unique post graduate University accredited course on reporting on children.

⁴ *Centre for Child Law and Others v Media 24 Limited and Others* [2019] ZACC 46.

⁵ The Web Rangers programme is run together with major partners including Google, Facebook, the Department of Communications and Digital Technologies, the Media Development and Diversity Agency and MTN. For more information, please see webrangers.co.za.

⁶ MMA, ‘Children’s Rights Online: Towards a digital rights charter’ (2020) (accessible at: <https://powersingh.africa/wp-content/uploads/2020/11/Discussion-Document-Children-Rights-Online.pdf>).

⁷ Global Human Rights Clinic, et al, ‘Access denied: internet access and the right to education in South Africa’ (2020) (accessible at: <https://internetaccess.africa/wp-content/uploads/2020/09/Access-Denied-Report-2020-FINAL->

12. Our submissions to the DBE are therefore informed by the knowledge we have garnered over the years, our engagements with civil society actors, the views of the children we work with, and our developing understanding of children's rights in the digital age.
13. For more information about MMA, please visit: mediamonitoringafrica.org.

THE IMPORTANCE OF ACCOUNTABILITY MECHANISMS IN ADVANCING THE RIGHT TO BASIC EDUCATION

Accountability

14. Accountability is one of the founding values enshrined in the Constitution.⁸ It plays an important role in the trust and legitimacy of organs of state and enables the proper functioning of our constitutional democracy. Maintaining respect for the constitutional values that require our interdependent branches of government to be accountable, responsive, and open is necessary to ensure the promotion of rationality and reasonableness that the rule of law requires and the accountability that democracy demands.⁹
15. In the context of the right to basic education, the principle of accountability is particularly important.
16. As the DBE is no doubt well aware, the right to basic education holds significant value in South Africa, as it is "an important socio-economic right directed, among other things, at promoting and developing a child's personality, talents and mental and physical abilities to his or her fullest potential".¹⁰ Education is also indispensable to the achievement of an individual's self-actualisation and broader socio-economic upliftment, and is the "primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities".¹¹ It is "a pivot of transformation, serving as it does to 'redress the entrenched inequalities caused by apartheid'.¹²
17. Moreover, it is important for the realization of the best interests of a child. Section 28(2) requires that the best interests of children are of paramount importance in every matter concerning children – this is augmented by the right to basic education.¹³

[min.pdf](#)).

⁸ Section 1(d) of The Constitution of the Republic of South Africa, 1996.

⁹ See *Matatiele Municipality and Others v President of the Republic of South Africa and Others* [2006] ZACC 2; 2006 (5) BCLR 622 (CC); 2006 (5) SA 47 (CC) at para 110.

¹⁰ *Governing Body of the Juma Masjid Primary School and Others v Essay N.O. and Others (Centre for Child Law and Another as Amici Curiae)* [2011] ZACC 13; 2011 (8) BCLR 761 (CC) (*Juma Masjid*) at para 43.

¹¹ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Article 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10 ("**General Comment 13**") (accessible at: <https://www.refworld.org/pdfid/4538838c22.pdf>).

¹² *Centre for Child Law and Others v Minister of Basic Education and Others* [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG) at para 4, quoting *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* [2009] ZACC 32; 2010 (2) SA 415 (CC); 2010 (3) BCLR 177 (CC) at para 45.

¹³ *Head of Department, Department of Education, Free State Province v Welkom High School and others* [2013] ZACC 25; 2013 (9) BCLR 989 (CC); 2014 (2) SA 228 (CC) at para 129.

18. Of particular relevance, is the right to basic education, which “is immediately realisable. There is no internal limitation requiring that the right be ‘progressively realised’ within ‘available resources’ subject to ‘reasonable legislative measures.’”¹⁴
19. Accordingly, and given the significance of the right, MMA submits that adequate and appropriate accountability mechanisms are non-negotiable.
20. This translates to a positive obligation on the state, at a minimum, to devise a comprehensive and workable plan to ensure that learners can access their right to basic education, which includes a clear allocation of responsibilities across the spheres of government as well as the formulation of coherent and capable policies aimed at the realisation of the right. Cogent and enforceable standards – inclusive of clear implementation objectives and timeframes are necessary mechanisms for ensuring accountability.
21. The current Norms and Standards recognise, to a certain degree, the necessity of accountability mechanisms, as set out in the objectives, which are to:
 - 21.1. Provide **minimum norms and standards** for public schools infrastructure;
 - 21.2. Ensure that there is **compliance with the minimum uniform norms and standards** in the design and construction of new schools and additions, alterations, and improvements to schools which already exist; and
 - 21.3. Provide for **timeframes** within which school infrastructure backlogs must be eradicated.
22. The Draft Norms and Standards, in particular the proposed amendments to regulation 4, clearly depart from these objectives.
23. MMA is further concerned that the Draft Norms and Standards appear to be watering down reporting processes. Each of these steps erodes accountability and constitutes a retrogressive step.
24. MMA submits that the Draft Norms and Standards do too little to enable the immediate realisation of the right to basic education. MMA further submits that as a result of the proposed changes to the implementation, the Draft Norms and Standards fall short of the requirements of clear, coherent, and comprehensive regulatory and policy objectives.
25. In the absence of deadlines and proper reporting mechanisms, it becomes increasingly difficult to ensure that the DBE is fulfilling its role, which in turn erodes the ability to hold the DBE accountable. This is contrary to our foundational values of accountability and is certainly contrary to the state’s obligation to respect, protect, and promote the right to

¹⁴ *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* [2011] ZACC 13; 2011 (8) BCLR 761 (CC) at para 27.

basic education.

The state's obligations in terms of section 237

26. In addition to the above, MMA submits that not only have there already been considerable delays in the implementation of the Current Norms and Standards but that the removal of deadlines – seemingly leaving open-ended timeframes – does not align with section 237 of the Constitution which requires the state to diligently perform, without delay, its constitutional obligations.
27. The DBE, when exercising the powers, must give effect to the obligations section 7(2) imposes, as well as the requirement for the diligent and timeous fulfilment of their obligations in terms of section 237.
28. The already slow progress brings section 237 to the fore. This is now compounded by the proposed removal of timeframes which poses serious concerns that the implementation of the Norms and Standards will not be done expeditiously and diligently – as the Constitution requires.

International guidance

29. In addition to the clear constitutional obligations, MMA refers the DBE to the UN Committee on Economic, Social and Cultural Rights (“CESCR”) concerning the right to education in its General Comment 13.¹⁵ Child rights expert and UNESCO Chair in Education Law in Africa, Professor Skelton, has described General Comment 13 as a useful benchmark against which to measure the government’s performance towards the realisation of the right to education.¹⁶ MMA agrees.
30. In order to guide states, General Comment 13 recommends four interrelated and essential features for realising the right to education.¹⁷ These, commonly referred to as the “4 As”, are briefly described as follows:
 - 30.1. **Availability:** included in the right to a basic education being available to children are the core components such as buildings, water, sanitation, furniture, textbooks, teachers, computer facilities and information technology.
 - 30.2. **Accessibility:** this includes education being accessible to all, without discrimination, and includes physical and economic accessibility, such as the child’s ability to enrol and attend school.
 - 30.3. **Acceptability:** this speaks to, among others, adequacy, quality, and sufficiency in terms of the form and substance of the provision of education. This may include

¹⁵ General Comment (above n 11).

¹⁶ A Skelton, ‘The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law’ *De Jure* (2013) at 4 (accessible at: <http://www.saflii.org/za/journals/DEJURE/2013/2.pdf>).

¹⁷ General Comment (above n 11) at para 6.

considerations around curriculum and class size.

- 30.4. **Adaptability:** this requires the provision of education to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. This also requires equality and inclusivity.
31. General Comment 13 makes express reference to the obligations of states to establish and maintain a transparent and effective system which monitors whether or not the right to education is being realised.¹⁸ It states that national educational strategies should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.¹⁹ It further notes that states are obliged to establish “minimum educational standards” to which all educational institutions are required to conform. States are also required to “maintain a transparent and effective system to monitor such standards”.²⁰
32. MMA brings this to the attention of the DBE to reinforce the importance of accountability mechanisms in the provision of the right to basic education, and to reinforce the prevailing position in terms of international human rights law, to which South Africa has committed itself, through the ratification, of among others, the International Covenant on Economic, Social and Cultural Rights.

Recommendations

33. In line with the above, MMA recommends that the DBE urgently reconsider and revise the provisions on implementation to re-incorporate clear, realisable, and reasonable deadlines, indicators, and benchmarks for implementation, so as to ensure that the Norms and Standards are infused with appropriate accountability mechanisms. The urgent revision is supported by the DBE’s duty in terms of section 237, as is the need for deadlines that enable the timeous compliance with constitutional prescripts and the progressive realisation of fundamental rights.
34. Moreover, MMA recommends that clear reporting structures be adopted, including by reinstating the minimum content of annual reports and plans to the Minister (currently stipulated in regulation 4(6)(b) of the Current Norms and Standards), and, in addition, requiring that the Minister in turn, on an annual basis report to the Portfolio Committee on Basic Education. The crisis currently plaguing the education system warrants additional oversight and accountability mechanisms.
35. On a more practical level, MMA recommends that the DBE revise the Draft Norms and Standards and publish them again for public comment. MMA suggest that given the gravity of the impact of Norms and Standards on the right to basic education, the revised draft should be published for public comment urgently.

¹⁸ Id at para 49.

¹⁹ Id at para 52.

²⁰ Id at para 54.

ACCESS TO THE INTERNET AS A COMPONENT OF A BASIC EDUCATION

The importance of electronic connectivity and access to the internet

36. As a point of departure, MMA notes that the Current Norms and Standards, at regulation 16, provide for electronic connectivity at a school which includes internet facilities. MMA notes that internet access is a fundamental component of internet facilities, which in turn is essential for electronic connectivity. MMA records that where reference is made to electronic connectivity, internet connection, and access to the internet, this is to be understood in line with the provisions of regulation 16.
37. Electronic connectivity and internet access enable children to unlock the full array of opportunities offered by the internet and to use the internet as a tool for realising human rights, fighting inequality, and enhancing development and human progress.²¹
38. Access to the internet is fundamentally interlinked to education rights and expressive rights. These rights are guaranteed in our Constitution,²² and under international and regional law.²³ Access to the internet also implicates the right to equality and non-discrimination. The Access Denied report found:

“The discriminatory access to the internet further undermines the right to equality and non-discrimination, guaranteed both by the Constitution and under international human rights law. Because access to the internet is critical to [children’s rights], it should therefore follow that all [children] have the right to equal access to the internet. However, due to the current digital divide, this is not borne out in practice, and serves to entrench the existing socio-economic divides in the country.”²⁴

39. Our government on various occasions has recognised the importance of access to the internet and has made several commitments on this score including:
 - 39.1. As far back as 2004, the DBE acknowledged the essential nature of internet access for education, taking the position that information communication technologies (“ICTs”) should be regarded as “an essential transformative tool for education and training” as well as essential to the “creation of a pool of globally competitive

²¹ UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (2011) (accessible at https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf).

²² Everyone has the right to basic education (section 29) and everyone has the right to Everyone has the right to freedom of expression, which includes— (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research (section 16(1)).

²³ Convention on the Rights of the Child (1989) see articles 13, 17, 23, 24, and 28 (accessible at <https://www.unicef.org/child-rights-convention/convention-text>); African Charter on the Rights and Welfare of the Child (ACRWC) (1990) see article 7 and 11 (accessible at: https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf).

²⁴ Global Human Rights Clinic (above n 7) at 17.

human resources.”²⁵

- 39.2. South Africa Connect (“**SA Connect**”), is the government’s primary policy for broadband access in the country. The policy, first published in 2013, set the goal of connecting all schools to the internet by 2020 at speeds of at least 10 megabits per second, with all schools to be connected at 100 megabits per second by 2030.²⁶
 - 39.3. Universal Service and Access Obligations (“**USAOs**”) are licensing obligations imposed by the Independent Communications Authority of South Africa (“**ICASA**”) on telecommunications operators (“**Operators**”), known as Universal Service and Access Obligations. As of 2014, ICASA has required the Operators to each connect a designated number of schools to the internet.²⁷
 - 39.4. Recently, the Minister of Communications and Digital Technologies recorded in her budget speech that we “will see the telecommunications operators connecting 18 520 schools” and that the Department is working with ICASA to monitor the progress on the connection of these sites.²⁸
 - 39.5. During a portfolio committee briefing in May 2022, the Deputy Minister of the DBE advised that the DBE had developed a plan to roll out ICTs in schools, working with provinces to ensure that ICTs are utilised and provided to schools. The DBE explained that it worked with mobile network operators who were obligated by their licensing to assist the Department in rolling out ICT.²⁹
40. At the international level, in 2018, South Africa accepted the following recommendation from the CESCR in terms of its commitments under the International Covenant on Economic, Social and Cultural Rights:

“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).
- (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

²⁵ Department of Education White Paper on e-Education, Notice 1869 of 2004, Government Gazette No. 26734, 17, 26 (Aug. 2004).

²⁶ Department of Communications and Digital Technologies, ‘SA Connect’ (accessible at: <https://www.dcdt.gov.za/sa-connect-document.html>).

²⁷ General Notice – Vodacom Amended Universal Service Obligations 2014, GN 402 of GG 37718 (4 June 2014); General Notice – Cell C Amended Universal Service Obligations 2014, GN 403 of GG 37718 (4 June 2014); General Notice – MTN Amended Universal Service Obligations 2014, GN 401 of GG 37718 (4 June 2014).

²⁸ Minister Khumbudzo Ntshavheni: Communications And Digital Technologies Dept Budget Vote 2022/23 (18 May 2022) (accessible at: <https://www.gov.za/speeches/minister-khumbudzo-ntshavheni-communications-and-digital-technologies-dept-budget-vote>).

²⁹ Mathematics, Science and Technology Strategies and Interventions (teacher training and development, teacher demand/needs, learner uptake, improved subject performance): DBE briefing with Deputy Minister (17 May 2022) (accessible at: <https://pmg.org.za/committee-meeting/34936/>).

groups.”³⁰

41. Despite these commitments, estimates from the DBE suggest that **63.5% of public schools do not have computer centres, and only 18.5% of schools have internet connectivity for teaching and learning.**³¹

Lesson from the pandemic

42. The need for the internet in schools has been highlighted as an important priority and gap in the education system in the wake of the COVID-19 pandemic. In South Africa, it was estimated that nearly 12 million children were affected by the shutdown of schools during this unprecedented crisis.³² The inherent importance and critical reliance on the internet made it “clear that internet access is not only an essential public good and basic need — it is a lifeline.”³³ Statistics South Africa reported that only 11.7% of South African schools have access to remote learning most of which was only accessible in urban areas.³⁴ The pervasiveness of existing issues pertaining to access, connectivity, and digital literacy have been magnified by COVID-19.
43. Fortunately, both the South African government, the private sector and civil society stepped up to assist in facilitating access to the digital environment. This signalled an important shift that COVID-19 has been a wake-up call and a “motivating factor towards digital transformation in the education sector”.³⁵ This unexpected positive outcome of the pandemic has made it clear that ensuring that learners are afforded necessary educational opportunities both on and offline is within reach. MMA acknowledges that prolonged and heightened tech dependence will become a ubiquitous part of society, which undoubtedly impacts the education landscape. Along with the growing acceptance that “internet rights and freedoms are more important now than ever before,”³⁶ it is increasingly apparent that internet access for all learners is practically possible.

Regional and international guidance

44. In addition to the expressive rights, the best interest of the child principle, and education rights, regional and international bodies have explicitly highlighted the importance of access to the internet.

³⁰ CESCR, ‘Concluding report on the initial observations on South Africa’, E/C.12/ZAF/CO/1, 12 October 2018, at paras 76-77 (accessible at: <https://digitallibrary.un.org/record/1654223?ln=en>).

³¹ Department of Basic Education, ‘National Education Infrastructure Management System Standard Report’ (2019) (accessible at <https://www.education.gov.za/Portals/0/Documents/Reports/NEIMS%20standard%20reports%202019.pdf?ver=2019-09-27-150623-250>).

³² Ramrathan L, ‘School curriculum in South Africa in the Covid-19 context: An opportunity for education for relevance’ (2020) (accessible at: <https://link.springer.com/article/10.1007/s11125-020-09490-1>).

³³ S Jorge, et al, ‘Covid-19 Policy Brief: Internet Access & Affordability’ Alliance for Affordable Internet and Web Foundation (2020) (accessible at: http://webfoundation.org/docs/2020/04/Covid-Policy-Brief-Access_Public.pdf).

³⁴ Statistic South Africa, ‘Education Series Volume VIII COVID-19 and barriers to participation in education in South Africa’ (2020) (accessible at: <https://www.statssa.gov.za/publications/Report-92-01-08/Report-92-01-082020.pdf>).

³⁵ David Mhlanga and Tankiso Moloi, ‘COVID-19 and the Digital Transformation of Education: What Are We Learning on 4IR in South Africa?’ 10 *Educational Science* 190 (2020) at 5.

³⁶ African Declaration on Internet Rights and Freedoms Coalition, ‘position paper in response to the COVID-19 pandemic’ https://africaninternetrightrights.org/sites/default/files/AfDec_COVID-19_Position-paper_Eng.pdf (June 2020).

45. The Revised Declaration of Principles on Freedom of Expression and Access to Information in Africa, which recognises new digital technologies in the realisation of the rights to freedom of expression and access to information, provides that states must provide affordable access to the internet for children and equip them with digital literacy skills for online education.³⁷

46. The UN Human Rights Council's ("HRC") 2016 resolution "on the promotion, protection, and enjoyment of human rights on the Internet" emphasises that:

"[A]ccess to information on the Internet facilitates vast opportunities for affordable and inclusive education globally, thereby being an important tool to facilitate the promotion of the right to education while underlining the need to address digital literacy and the digital divide, as it affects the enjoyment of the right to education."³⁸

47. More recently, the UN Committee on the Rights of the Child published General Comment 25 on children's rights in relation to the digital environment which makes important pronouncements on internet access in schools:

"The digital environment can greatly enable and enhance children's access to high quality inclusive education, including reliable resources for formal, non-formal, informal, peer-to-peer and self-directed learning. Use of digital technologies can also strengthen engagement between the teacher and student and between learners. **Children highlighted the importance of digital technologies in improving their access to education and in supporting their learning and participation in extracurricular activities**

...

States parties should invest equitably in technological infrastructure in schools and other learning settings, ensuring the availability and affordability of a sufficient number of computers, high-quality and high-speed broadband and a stable source of electricity, teacher training on the use of digital educational technologies, accessibility, and the timely maintenance of school technologies. They should also support the creation and dissemination of diverse digital educational resources of good quality in the languages that children understand and ensure that existing inequalities are not exacerbated, such as those experienced by girls" (own emphasis).

48. Most recently, through its July 2022 resolution, the UNHRC underlined that—

³⁷ Revised Declaration of Principles on Freedom of Expression and Access to Information in Africa (Revised Declaration) (2019) (accessible at <https://www.achpr.org/legalinstruments/detail?id=69>).

³⁸ UNCHR, 'The promotion, protection and enjoyment of human rights on the Internet' Res. 32/13, U.N. Doc. A/HRC/RES/32/13 (2016) (accessible at: https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/res/32/13).

“connectivity, access to information and communications technology, and the promotion of open and secure digital access and digital inclusion, including through digital, media and information literacy, are critical for the enjoyment of the right to freedom of opinion and expression and to bridge the digital divides”.³⁹

49. MMA brings this to the attention of the DBE to highlight the regional and international acceptance that access to the internet is fundamentally important. As such, appropriate implementation measures must be incorporated into the Norms and Standards. Without access to the internet and connectivity, learners cannot truly and fully realise their constitutional rights.

Exclusion implementation standards for electronic connectivity

50. Given that access to the internet is an enabler of various rights, regulation 16 of the Current Norms and Standards envisages *electronic connectivity and internet facilities at a school* which requires all schools to have some form of wired or wireless connectivity. It is deeply regrettable that, so soon after the pandemic demonstrated the crucial need for internet access, the Draft Norms and Standards appear to deprioritize such access.
51. MMA records that the current Norms and Standards regulations 4(b)(ii) and 4(c) provide for electricity, water, sanitation, electronic connectivity, and perimeter security. The proposed changes in relation to regulation 4(b)(ii) (incorporated in draft regulations 10, 11, and 12) only include references to electricity, water, and sanitation.
52. MMA notes two primary concerns with the proposed 4(b)(ii): first, it does away with deadlines, which as noted above is problematic, and second, it excludes reference to electronic connectivity. MMA further observes that security is addressed under regulation 4(b)(iv) (security is part of the current implementation regulation along with electricity, water, sanitation, and electronic connectivity). This means, that from the Current Norms and Standards, electronic connectivity is the only norm and standard that finds no application in the Draft Norms and Standards. While we appreciate that regulation 16 remains, the exclusion of electronic connectivity in terms of implementation is deeply worrying and fails to recognise the inherent importance of internet access as outlined above.
53. MMA sees no reasonable justification for this exclusion and is deeply concerned by the omission which has the potential to impede learners’ right to education and expressive rights.

Recommendations

54. In light of the above considerations around the importance of access, the persistent commitments from our government, the lessons learnt from the pandemic, and the

³⁹ UNHRC, ‘Freedom of opinion and expression’ Res 50/ A/HRC/50/L.11 (2022) (accessible at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F50%2FL.11&Language=E&DeviceType=Desktop&LangRequested=False>).

prevailing regional and international standards, MMA submits that electronic connectivity must be included in the provisions relating to implementation and be coupled with clear, realisable, and reasonable deadlines, indicators, and benchmarks for implementation.

55. In terms of timing and given that the 7-year timeframe of the Current Norms and Standards has lapsed, and the majority of schools remain unconnected, MMA recognises that a concerted effort is needed to roll out connectivity, particularly in rural areas. This however does not mean that the DBE should unduly prolong the process. Denying access and connectivity means denying the realisation of the rights of learners. This cannot be permitted to endure. Accordingly, MMA submits that the Norms and Standards should reflect a 3-year period within which to ensure electronic connectivity is available in all schools.
56. In terms of practicalities, MMA reiterates the 4 As above and refers to recommendations set out both in the Access Denied report,⁴⁰ and the Seven Point Plan,⁴¹ which may be of use to the DBE as it reconsiders its approach to electronic connectivity. For example, MMA recommends that Norms and Standards include reference to the physical functionality and infrastructure which schools need to make effective use of the technology. This would include prioritizing reliable electricity with sufficient access points. Considerations around physical security and insurance for devices and equipment should also be provided for in the Norms and Standards.
57. MMA acknowledges that facilitating access to internet connectivity at schools requires coordinated efforts. MMA submits that, on the issue of coordination, there is an important issue that must be addressed: the need for coordination and multi-stakeholder engagement across different departments, regulators, and private sector actors.
58. 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”.
59. As such, MMA has on previous occasions put forward a proposal for a joint inter-ministerial committee on internet governance issues. In its 2020 submissions to the Competition Commission on the Draft Paper on Competition in the Digital Economy, MMA proposed the establishment of an Interdepartmental Steering Committee (ISC) on internet governance to address relevant matters, including access to the internet.⁴² It is proposed that the ISC 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 Competition Commission, ICASA,

⁴⁰ Global Human Rights Clinic (above n 7).

⁴¹ MMA (above n 2).

⁴² MMA, ‘Submissions to the Competition Commission on the Draft Paper on Competition in the Digital Economy (2020) [accessible at: <https://mediamonitoringafrika.org/wordpress22/wp-content/uploads/2020/11/MMA-Submission-on-competition-in-the-digital-economy-as-submitted.pdf>].

and the Information Regulator.

60. Accordingly, and for present purposes, MMA recommends that this proposal be considered by the DBE and that government actors engaged in programs related to connectivity should urgently coordinate their efforts and lean on each other's capabilities, connections, technology, and infrastructure to increase the speed, quality, and efficiency of internet access in schools. The DBE should work closely with, among others, the Department of Communications and Digital Technologies, the Department of Rural Development and Land Reform, and the Department of Science and Technology to achieve connection in all schools. Moreover, the DBE should make use of a research facility like the CSIR or experts on ICTs. The DBE must also communicate more effectively with private sector actors that participate in ensuring school connectivity as part of their licensing obligations.

CONCLUSION

61. MMA reiterates its appreciation for the opportunity to provide this submission and would welcome the opportunity to make oral submissions if the opportunity is available.
62. MMA submits that the Draft Norms and Standards are currently deficient and constitute a step backwards from the Current Norms and Standards. We call on the DBE to urgently revise and re-circulate the Draft Norms and Standards for public comment. MMA stresses that issues of accountability and electronic connectivity are important issues that must be dealt with as a matter of urgency.
63. MMA remains willing and available to provide any further information that may be of assistance to the DBE.

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