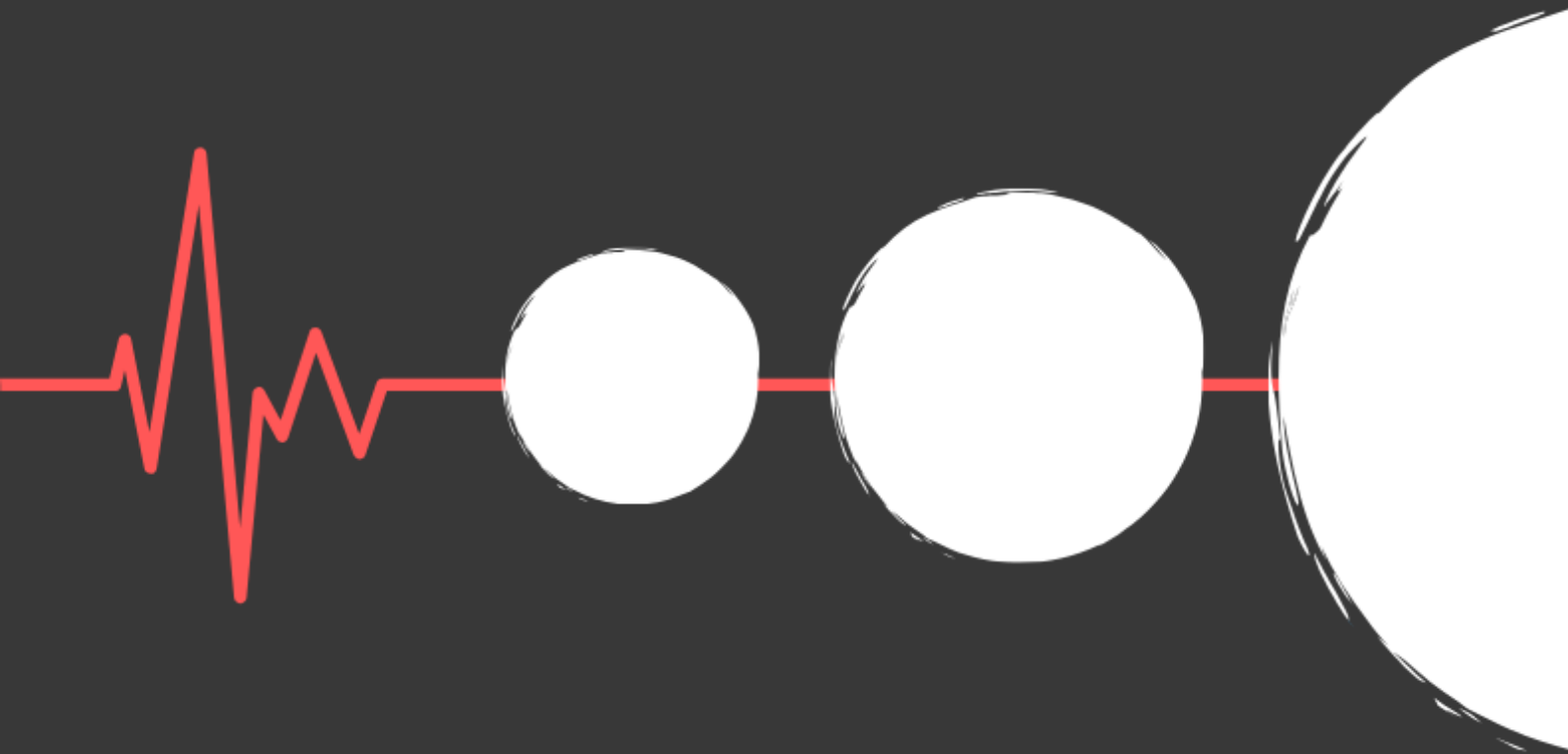# UNIVERSAL ACCESS TO THE INTERNET AND FREE PUBLIC ACCESS IN SOUTH AFRICA

// A SEVEN-POINT IMPLEMENTATION PLAN

SEPTEMBER 2019

MEDIAMONITORING **AFRICA**

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// LIST OF ACRONYMS

4IR	Fourth Industrial Revolution
ACHPR	African Commission on Human and Peoples' Rights
APC	Association for Progressive Communications
CRPD	Convention on the Rights of Persons with Disabilities
DCDT	Department of Communications and Digital Technology
DoC	Department of Communications
DTPS	Department of Telecommunications and Postal Services
ECtHR	European Court of Human Rights
EU	European Union
GDPR	General Data Protection Regulation
HRC	Human Rights Council
HRCtte	Human Rights Committee
IABSA	Interactive Advertising Bureau of South Africa
ICASA	Independent Communications Authority of South Africa
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and communication technology
ILO	International Labour Organisation
ITU	International Telecommunications Union
MMA	Media Monitoring Africa
PAIA	Promotion of Access to Information Act 2 of 2000
POPIA	Protection of Personal Information Act 4 of 2013
SANEF	South African National Editors' Forum
SDGs	Sustainable Development Goals
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization

// EXECUTIVE SUMMARY

Universal access to online information is necessary for the realisation of the full array of fundamental rights in South Africa. This has been recognised through domestic and international human rights commitments, and is central to achieving a more equitable and informed society.

This report puts forward a seven-point plan for achieving universal access to the internet and free public access in South Africa. The elements of the plan should be seen as mutually supportive and reinforcing, working together towards the overall aim. The aspects of the seven-point plan are as follows: (i) free public access to the internet at government sites; (ii) zero-rated access to government websites and data; (iii) free public wi-fi; (iv) the provision of free basic internet as a municipal service; (v) digital literacy programmes; (vi) minimum protections in the provision of free access to the internet; and (vii) oversight and monitoring of the progressive realisation of free access to the internet.

The seven-point plan seeks to provide a holistic approach aimed at the following overarching themes:

- *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 a 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.
- *Safety of access:* The second theme seeks to ensure that, once people are online, they are safe and free from harm. 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.
- *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.

This report details these proposed measures – developed in the public interest and through a rights-based lens – that can serve to further the goal of universal access to the internet and free public access in South Africa, and further offers an implementation plan in order to achieve this.

// INTRODUCTION

"When it comes to digital inclusion, the focus must be on achieving critical mass on internet penetration. We all know that economic growth, job creation and entrepreneurial activity is inextricably linked to broadband access. We therefore need to ensure that broadband access – like healthcare and education – is available to all.

If we do not overcome social, economic and spatial inequality in the provision of broadband, we will simply perpetuate the economic exclusion of the majority of people."

- President Cyril Ramaphosa[1]

OVERVIEW OF THE REPORT

Universal access to online information can, should and must be made accessible for all persons in South Africa. This is necessary for the realisation of the full array of fundamental rights guaranteed under the country's constitutional and international human rights commitments. Further, this is central to achieving a more equitable and informed society, in which all persons in the country are able to unlock the potential that access to the internet, ICTs and other online information can offer.

This has been recognised in policy commitments and statements at the domestic, regional and international levels. However, this is not borne out by the reality on the ground. Rather, South Africa continues to face a significant digital divide, with vulnerable and marginalised communities remaining worst-affected – which only serves to entrench, and potentially worsen, the existing socio-economic divides in the country.

This report puts forward a seven-point plan for achieving universal and a basic level of free access to online information in South Africa. The elements of the plan should be seen as mutually supportive and reinforcing, working together towards the overall aim. This is in no way intended to replace or supplant other existing measures that are being taken with a similar aim; rather, this plan is intended to compliment such measures, and seek better coordination amongst the various measures being taken.

It must be emphasised at the outset that these initiatives are framed by the public interest and through a rights-based lens. Further, this report focuses specifically on the question of access: while interrelated, issues relating to the availability, affordability and acceptability fall beyond the scope of this report. Specifically, the seven-point plan seeks to address three overarching themes:

- *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 a 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.
- *Safety of access:* The second theme seeks to ensure that, once people are online, they are safe and free from harm. 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.
- *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

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[1] Welcome remarks delivered by Finance Minister Mboweni on behalf of President Ramaphosa during a plenary entitled 'Shaping inclusive growth and shared futures for the Fourth Industrial Revolution', World Economic Forum, 5 September 2019, accessible at http://www.thepresidency.gov.za/speeches/welcome-remarks-delivered-finance-minister-mboweni-behalf-president-ramaphosa-during.

monitoring and evaluation to be undertaken to ensure that the realisation of this aim remains consistently on track.

These three themes, borne out through the seven-point plan, present a holistic and mutually reinforcing approach to universal access to online information.

GUIDING PRINCIPLES

In June 2019, the United Nations (UN) Secretary-General's High-Level Panel on Digital Cooperation published a report on digital interdependence.[2] The report sets out the proposed values that should shape the development of digital cooperation. These values are similarly applicable to the development and implementation of the seven-point plan set out in this report, as well as to most other initiatives aimed at universal access to the internet and free public access.

The nine values are as follows:[3]

- *Inclusiveness:* Leaving no one behind, so that we can maximise equality of opportunity, access and outcomes to achieve the Sustainable Development Goals (SDGs).
- *Respect:* Embodying respect for human rights and human dignity, diversity, the safety and security of personal data and devices, and national and international law.
- *Human-centredness:* Maximising benefits to humans, and ensuring that humans remain responsible for decisions.
- *Human flourishing:* Promoting sustainable economic growth, the social good and opportunities for self-realisation.
- *Transparency:* Promoting open access to information and operations.
- *Collaboration:* Upholding open standards and interoperability to facilitate collaboration.
- *Accessibility:* Developing affordable, simple and reliable devices and services for as diverse a range of users as possible.
- *Sustainability:* Furthering the aim of a zero-carbon, zero-waste economy that does not compromise the ability of future generations to meet their own needs.
- *Harmony:* The use by governments and businesses of digital technologies in ways that earn the trust of peers, partners and people, and that avoid exploiting or exacerbating divides and conflicts.

METHODOLOGY

In September 2017, the Association for Progressive Communications (APC) published an issue paper titled 'Perspectives on universal free access to online information in South Africa: Free public wi-fi and zero-rated content'[4] (APC Issue Paper). The purpose of the APC Issue Paper was to examine the background and legal framework that support a right to universal free access to online information, with a specific focus on the South African context.

Following from the APC Issue Paper, various consultations were held with different stakeholders, including the South African Human Rights Commission and the Office of the Information Regulator. This culminated in a workshop held in July 2019, in which stakeholders from the government, industry, civil society and

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[2] UN Secretary-General's High Level Panel on Digital Cooperation, 'The age of digital interdependence', June 2019, accessible at https://digitalcooperation.org/wp-content/uploads/2019/06/DigitalCooperation-report-web-FINAL-1.pdf.

[3] *Id.* at p 12.

[4] The issue paper was prepared for APC with the assistance of ALT Advisory, in collaboration with the South African National Editors' Forum (SANEF) and the Interactive Advertising Bureau of South Africa (IABSA). APC, 'Perspectives on universal free access to online information in South Africa: Free public wi-fi and zero-rated content', September 2017, accessible at https://www.apc.org/en/pubs/perspectives-universal-free-access-online-information-south-africa-free-public-wi-fi-and-zero.

academia were invited to discuss the particulars of the seven-point plan and the practicalities of giving effect to universal internet access and a level of basic free access.

This report draws on the groundwork laid by the APC Issue Paper, the consultations and the roundtable, as well as additional desktop research, in order to develop a roadmap for the implementation of the seven-point plan. This report is structured as follows:

- **Part I** sets out an overview of the concept of universal access.
- **Part II** provides an understanding of universal access through a rights-based lens.
- **Part III** details the elements of the seven-point plan.
- **Part IV** offers a checklist for the implementation of the seven-point plan.

It bears mention that while this report is an important development in the realisation of the seven-point plan, it is only the beginning. The success and implementation will depend on the willingness of all stakeholders to engage meaningfully in a shared vision to achieve universal free access to online information for all persons in South Africa.

// PART I: THE CONCEPT OF UNIVERSAL AND FREE ACCESS

"The internet has become a pervasive and fundamental part of daily life. Its impact on both economic development and solving problems in areas such as health, education, basic financial services and agriculture is well-documented. Still, some 4 billion people – more than 55% of the world's population – do not use the internet.

Many do not have access because they live in hard-to-reach areas or do not have access to digital or other basic infrastructure. Some do not see the benefits of being connected, often because of limited relevant digital content. Still others are illiterate, and many are poor. Inequality – in terms of gender, income or other factors – compounds the problem."

- World Economic Forum[5]

DEFINING THE TERMINOLOGY

The term "access"

Access entails two distinct but interrelated dimensions: (i) access to and dissemination of content online; and (ii) access to the physical infrastructure to enable access to such online content. Determining the meaning of universal free access is complex, particularly given the multifaceted and interrelated aspects that constitute the term "access" in respect of the internet and other ICTs. At the outset, the following concepts should be distinguished:[6]

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

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[5] World Economic Forum (WEF), 'Internet for all: A framework for accelerating internet access and adoption', April 2016, p 5, accessible at
http://www3.weforum.org/docs/WEF_Internet_for_All_Framework_Accelerating_Internet_Access_Adoption_report_2016.pdf.
[6] DTPS, 'National integrated ICT policy white paper', 28 September 2016, p 32, accessible at
https://www.dtps.gov.za/images/phocagallery/Popular_Topic_Pictures/National_Integrated_ICT_Policy_White.pdf,

- *Availability* of networks and coverage.
- *Affordability* relating to the ability to pay for access to infrastructure, networks, devices and services.
- *Awareness* by users and potential users of what is available and the benefits of these.
- *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.
- *Quality of service* and the expectation that the services provided should be of good quality and acceptable standards.

Further to this, government policy draws a distinction between the terms "universal service" and "universal access": universal service relates to the direct provision of ICT services to individuals or households; while universal access is aimed at increasing access to communication services on a shared basis, such as a community or village-wide level.[7] The government's policy position has been that – while universal service is the ultimate objective in South Africa – universal access strategies will be put in place to achieve communications for all in communities, and categories of persons in need of demand-side subsidies, in the medium-term.[8]

This distinction between universal service and universal access is further supported by the International Telecommunications Union (ITU). In this regard, according to the ITU, universal access "usually means that everyone in a population has access to public available communication network facilities and services. Typically, this is provided through such means as pay telephones, community telecentres and community internet access terminals".[9]

Universal access should be understood as more than simply whether one is connected or unconnected. Connectivity in this regard exists 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. In recognition of this continuum, and as contended by APC, access should be construed as referring to "meaningful internet access".[10] This pertains to pervasive, affordable connectivity to the internet, of sufficient quality and speed, in a manner that enables the user to benefit from internet use, including to participate in the public sphere, exercise human rights, access and create relevant content, engage with people and information for development and well-being, and so on.[11]

This further applies irrespective of the means of such access, regardless of whether this is via a mobile or other device, and whether through private ownership of a device or using a public access facility like a library.[12]

It bears reiterating that the focus of this report is on universal access. While other aspects, such as affordability, may be dealt with briefly to the extent that they are directly relevant to the issue of universal access, they generally fall beyond the scope of this report.

The term "free access"

In the context of this report, free access refers to the service being free to the user. This might be either wholly or in part, in the latter being, for example, where an initial allocation is offered for free to the user with usage in excess of that allocation being subject to payment at an appropriate rate.

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[7] *Id.* at p 28.
[8] *Id.*
[9] ITU, 'Rethinking universal access', accessible at
https://www.itu.int/itunews/manager/display.asp?lang=en&year=2007&issue=07&ipage=universal-access&ext=html.
[10] APC, 'Bridging the gender digital divide from a human rights perspective', February 2017, p 3, accessible at
https://www.ohchr.org/Documents/Issues/Women/WRGS/GenderDigital/APC.pdf.
[11] *Id.*
[12] *Id.*

This means, of course, that the cost of access will be carried by another stakeholder. This might, for example, be the government acting in the public good, or a private service provider acting in terms of a licensing obligation or incentivised scheme. The importance of effective public-private partnerships cannot be gainsaid. These do, however, need to be in the public interest, and be transparent, accountable and fully compliant with the relevant public procurement processes.

The term "universal free access"

The provision of free access must be made available to all persons in South Africa, on an equal basis and without discrimination. This is both a founding value and a self-standing constitutional right, and one that is an essential underpinning of the seven-point plan. This is imperative to ensure that the seven-point plan serves to redress the digital divide, and not contribute to deepening it along existing socio-economic divides.

The digital divide is not a static concept, and manifests differently in different contexts.

// A Selection of Digital Divides[13]

Divide	Description
Access	It starts with access or the lack thereof: although internet penetration has increased, it continues to be a key barrier as more people globally remain offline.
Affordability	The gap between rich and poor affects affordability of ICTs and serves as an important difference in adoption within countries as much as between them.
Age	Older people are generally using ICTs to a lesser extent than younger populations, despite the notion that they could benefit from online social and health services.
Bandwidth	International bandwidth and the capacity to transmit and receive information over networks varies greatly between countries but also within them, limiting potential useful endeavours.
Content	Relevant content in local language(s) is important to stimulate adoption.
Disability	Those with disabilities face additional hurdles to use ICTs if websites are not compliant with web accessibility guidelines, as well as in respect of the availability and accessibility of appropriate devices.
Education and Skills	Like social divides, education and literacy rates are fundamental challenges to bridge digital divides. Persons who have access to ICTs from an early age are more easily able to acquire more advanced digital literacy skills later in life.
Gender	There is a small but persistent difference in online usage between men and women.
Location	Rural and remote areas are often at a disadvantage in terms of speed and quality of services as compared to their urban counterparts.
Migration	Migrants may not possess the same levels of digital skills as the population in their new country and if they do, may be subject to content and language divides.
Mobile	Mobile devices provide opportunities to bridge the access gap but can also introduce new forms of divides in terms of technology, speed and usage.
Speed	The gap between basic and broadband access is creating a new divide as speed is important to reap the full benefits of a digital society.
Useful usage	What people do with their access is a key difference in whether users take full advantage of ICTs, such as e-government services.

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[13] UN, 'e-Government Survey 2018', 2018, accessible at https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2018.

As such, universal free access in the context of this report pertains to all persons in South Africa being able to access relevant online information, whether from a private device or a shared facility, in order for them to be able to make meaningful use of the information and at no cost to the user for such access.

As noted by the United Nations Educational, Scientific and Cultural Organization (UNESCO), globalisation may engender side effects such as marginalisation.[14] According to UNESCO, it is up to international institutions and national authorities to counter such possible effects, particularly in areas of access to information and knowledge, the spread of new ICTs and the development of multilingualism in cyberspace.[15]

// Recommendation Concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace[16]

As noted by UNESCO, globalisation may engender side effects such as marginalisation. According to UNESCO, it is up to international institutions and national authorities to counter such possible effects, particularly in areas of access to information and knowledge, the spread of new ICTs and the development of multilingualism in cyberspace.

In this regard, UNESCO has prepared the Recommendation Concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (UNESCO Recommendation), which addresses the following issues: (i) development of multilingual content and systems; (ii) facilitating access to networks and services; (iii) development of public domain content; and (iv) reaffirming the equitable balance between the interests of rights-holders and the public interest.

The UNESCO Recommendation calls on member states to take legislative and other steps to implement the recommended course of action, and to bring it to the attention of the authorities and services responsible for public and private works on ICT policies, strategies and infrastructures, including use of multilingualism on the internet, the development of networks and services, expansion of public domain information on the internet and intellectual property rights issues.

BARRIERS TO ACHIEVING UNIVERSAL FREE ACCESS

According to a position paper published by APC titled 'Ending digital exclusion: Why the access divide persists and how to close it',[17] the following underlying causes of limited connectivity are notable:[18]

- *Poor distribution of telecommunications infrastructure:* APC identifies the poor distribution of basic telecommunications infrastructure as the main reason that the internet is still poor dispersed and unaffordable for many people, particularly in rural areas. As noted by APC, "[t]here are insufficient affordable international and national backbones and last-mile / local networks".[19] This is compounded by low levels of digital literacy and a lack of relevant local content.
- *Market access and network provisioning models:* A lack of competitive open markets, and the hurdles in achieving market entry, is another barrier. Existing dominant licensees continue to dominate, which affects the availability, cost and quality of access.[20] Added to this, licensing requirements may be too onerous for smaller operators.

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[14] UNESCO, 'Access to information', accessible at https://en.unesco.org/themes/access-information.
[15] *Id.*
[16] Accessible at https://en.unesco.org/recommendation-mulilingualism.
[17] APC, 'Ending digital exclusion: Why the access divide persists and how to close it', April 2016, accessible at https://www.apc.org/sites/default/files/EndingDigitalExclusion_dig.pdf.
[18] *Id.* at pp 3-4.
[19] *Id.* at p 3.
[20] *Id.* at p 4.

- *Spectrum use:* Spectrum is a finite and limited resource. Conservative spectrum allocation policies may restrict the potential for new providers, particularly ones looking to make use of the latest technologies.[21] In South Africa, the Ministry of Finance holds the view that "the delay in digital migration and the spectrum allocation process is the single biggest constraint on the growth of the telecommunications sector and is a bottleneck for broader economic growth."[22]

- *Insufficient investment in public access facilities:* As noted by APC, for people who cannot afford their own equipment and connectivity, or who only have access in their place of work, public access facilities have the potential to offer an effective alternative.[23] However, there has been insufficient investment in this regard, and it appears in some ways to have fallen off the main agenda.

CURRENT STATE OF ACCESS TO THE INTERNET IN SOUTH AFRICA

According to the General Household Survey 2018, it was revealed that 64,7% of South African households had at least one member who had access to, or used the internet either at home, work, place of study or internet cafés.[24] Further, 10,4% of South African households had access to the internet at home.[25] This is reflected per province as follows:

	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
■ Anywhere	72,4	55,3	55,4	65,8	59,4	58,9	74,6	70,2	46,2	64,7
■ At home	25,8	4,1	4,6	7,6	5,6	3,0	16,7	4,4	1,7	10,4
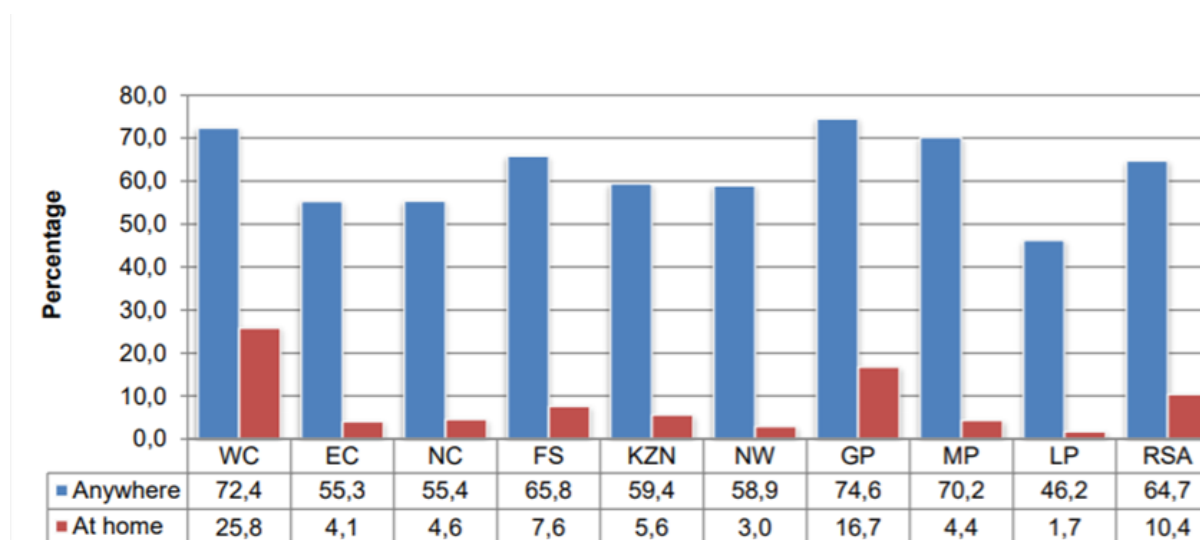
As explained in the General Household Survey, this graph shows that access to the internet using all available means was highest in Gauteng (74,6%), Western Cape (72,4%) and Mpumalanga (70,2%), and lowest in Limpopo (46,2%) and the Eastern Cape (55,3%).[26] Access to the internet at home was highest among households in Western Cape (25,8%) and Gauteng (16,7%), and lowest in Limpopo (1,7%) and North West (3,0%).[27]

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21 *Id.*
22 Ministry of Finance, 'Economic transformation, inclusive growth and competitiveness: Towards an economic strategy for South Africa', September 2019, p 22, accessible at
http://www.treasury.gov.za/comm_media/press/2019/Towards%20an%20Economic%20Strategy%20for%20SA.pdf
23 APC, above n 17, p 4.
24 Statistics South Africa, 'General household survey 2018', 28 May 2019, accessible at
http://www.statssa.gov.za/publications/P0318/P03182018.pdf.
25 *Id.* at p 57.
26 *Id.*
27 *Id.*

While 17,3% of households in metropolitan areas had access to the internet at home, this was true for only 1,7% of rural households in general and less than one per cent of rural households in North West (0,8%) and Limpopo (0,6%).[28] This is reflected in the General Household Survey as follows:[29]

Place where Internet is accessed	Rural/ Urban status	Province (per cent)									
		WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
At home	Metro	30,5	6,3	-	13,4	8,9	-	17,5	-	-	17,3
	Urban	17,0	5,7	5,9	5,8	6,9	5,1	11,5	6,1	5,4	8,0
	Rural	15,5	1,4	1,1	2,9	1,2	0,8	6,4	3,1	0,6	1,7
	Total	**25,8**	**4,1**	**4,6**	**7,6**	**5,6**	**3,0**	**16,7**	**4,4**	**1,7**	**10,4**
At work	Metro	22,7	23,5	-	12,4	23,3	-	27,2	-	-	25,0
	Urban	19,7	12,9	14,5	12,3	19,7	10,7	17,5	7,9	18,8	14,9
	Rural	9,5	1,8	3,3	2,9	3,1	4,6	9,7	5,5	1,8	3,3
	Total	**21,1**	**11,8**	**11,4**	**11,1**	**15,1**	**7,6**	**25,8**	**6,5**	**5,7**	**16,2**
Using mobile devices	Metro	67,8	71,6	-	69,5	60,0	-	68,6	-	-	67,4
	Urban	54,5	57,9	55,2	63,7	61,2	68,1	68,6	76,1	58,1	63,7
	Rural	26,8	36,9	50,2	50,8	45,2	46,7	34,6	63,1	38,9	45,0
	Total	**61,7**	**53,7**	**53,9**	**63,6**	**54,9**	**57,2**	**68,3**	**68,8**	**43,3**	**60,1**
At Internet Cafes or educational facilities	Metro	15,5	17,6	-	4,3	10,4	-	17,8	-	-	15,8
	Urban	13,8	9,8	2,9	10,9	9,2	5,8	5,7	2,5	5,6	7,6
	Rural	0,0	1,5	1,9	5,9	4,0	7,7	0,0	4,6	1,9	3,5
	Total	**14,1**	**9,0**	**2,6**	**8,3**	**7,8**	**6,7**	**16,1**	**3,7**	**2,7**	**10,1**

In respect of mobile access to the internet, the General Household Survey reflects that mobile access has made it much more accessible to households in rural areas.[30] Nationally, internet access using mobile devices (60,1%) was much more common than access at home (10,4%), at work (16,2%) and elsewhere (10,1%); although the use of mobile internet access devices in rural areas (45,0%) still lags behind its use in metros (67,5%) and urban areas (63,7%), it is much more common in rural areas than any of the alternative methods.[31]

THE ECONOMIC ARGUMENT FOR ATTAINING UNIVERSAL FREE ACCESS

According to a World Bank report, a 10-percentage point increase in fixed broadband penetration would increase growth in the Gross Domestic Product by 1,21% in developed economies and 1,38% in developing economies.[32] There are four key variables that must be addressed for the link between broadband and economic growth to take place:[33]

- *Critical mass:* Broadband must reach a critical mass of South Africans.
- *Affordable:* Access to broadband must be affordable.
- *Demand-side skills:* Demand-side skills must be developed so that broadband services can be optimised for personal and business use.

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28 *Id.*
29 *Id.*
30 *Id.*
31 *Id.*
32 World Bank, 'Digital dividends: Exploring the relationship between broadband and economic growth', 2016, accessible at http://documents.worldbank.org/curated/en/178701467988875888/Exploring-the-relationship-between-broadband-and-economic-growth.
33 Department of Communications, 'South Africa connect: Creating opportunities, ensuring inclusion – South Africa's broadband policy', 2013, accessible at https://www.gov.za/sites/default/files/gcis_document/201409/37119gon953.pdf.

- *Supply-side skills:* Supply-side skills must be developed so that the economic and innovative potential of broadband can be realise.

As noted by the WEF, research also highlights a positive relationship between the application of digital technologies and the quality of life.[34] The WEF highlights in this regard that the internet "helps solve many problems in such areas as health, education, basic financial services and agriculture. New services, such as mobile finance, are spread particularly by mobile technology and smartphones, and are more immediately available to more people."[35] Added to this, there are notable improvements in efficiency and productivity, both in terms of the offering of government services and in economic sectors such as agriculture.[36]

The UN Commission on Science and Technology for Development has also expanded upon some of the economic benefits that can accrue from providing citizens with access to the internet.[37] This includes creating possibilities for economic development by the creation of online services, businesses and applications which concurrently create jobs; enhancing education as the internet provides a platform for exchanging information and learning from others; benefiting healthcare by giving people, especially in rural areas, fast and direct access to consult about basic health questions; contributing to cultural and social development; and enhancing political engagement.

To fully actualise the economic benefits that the internet can offer, this should be coupled with a clear and effective regulatory and policy framework in the country as well. The International Telecommunications Union (ITU) has undertaken extensive work on the impact of regulation on the digital economy and digitisation, which encompasses the infrastructure of digital services, connectivity of devices, the digital transformation of households and production, the development of digital industries and the availability of digital factors of production.[38] According to the ITU, studies produced over the past two decades on the economic impact of telecommunications confirm, to a large extent, that wireline and wireless telephony, as well as fixed and mobile broadband, have directly and positively impacted on economic growth, and in some cases employment and productivity.[39]

Regarding the economic impact of operative policy and regulatory frameworks on the growth of markets for digital services, it records that "once a country introduces structural changes in its public policies, and in the institutional context influencing the diffusion and adoption of digital technologies, a change in the digital ecosystem development vector can be observed after a time lag".[40] This is illustrated in the report through an analysis of nine Latin American countries, which reveals that the acceleration of digitisation development can be associated to a modification in the policy and institutional context regarding the ICT sector, such as the launch and implementation of an effective national broadband plan:[41]

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[34] WEF, above n 5, p 8.
[35] *Id.*
[36] *Id.*
[37] UN Commission on Science and Technology for Development, 'Internet broadband for an inclusive digital society', UN Doc. E/CN.16/2013, 2013.
[38] ITU, 'The economic contribution of broadband, digitization and ICT regulation', 2018, p 1, accessible at https://www.itu.int/en/ITU-D/Regulatory-Market/Documents/FINAL_1d_18-00513_Broadband-and-Digital-Transformation-E.pdf.
[39] ITU, n 38, p 1.
[40] ITU, n 38, p 24.
[41] ITU, n 38, pp 24-25.

// Political and Institutional Factors that Impact the Rate of Change in the Digitisation Index

Country	Change in digitisation rate of development	Compound annual growth rate (CAGR)		Political / institutional change
		Before	After	
Argentina	2009	6,00%	8,15%	• Development of "Argentina Conectada" Plan • Creation of general coordination of the "Argentina Conectada" Plan within the Planning Ministry
Brazil	2011	7,53%	11,99%	• Launch of the National Broadband Plan
Chile	2008	4,79%	9,10%	• Digital Agenda • Creation of an Inter-ministerial Committee for Digital Development
Colombia	2011	10,22%	13,56%	• Creation of the ICT Ministry • Launch of the "Vive Digital" plan
Costa Rica	2010	4,06%	15,21%	• National broadband strategy • Transfer of Vice-Ministry of Telecommunications to the Ministry of Science and Technology
Ecuador	2011	6,32%	10,89%	• Launch of the "Ecuador Digital" Plan • Creation of the Ministry of Telecommunications and Information Society (8/2009)
Panama	2008	6,45%	10,55%	• Plan "Internet for All" • Creation of the National Authority for Governmental Innovation (2009)
Uruguay	2009	6,09%	11,91%	• Launch of "Plan Ceibal"

The report therefore draws the following conclusions from the table above:[42]

"[T]he change in the digitization index growth CAGR is directly related to changes in the institutional and policy environment. This would imply that the variable has an impact on the rate of digitization growth. This impact can take place through different mechanisms:

• In some cases, policy and/or institutional changes yield an acceleration in public ICT investment, which results in an improvement in the network reliability and affordability sub-indices.

• In other cases, institutional changes yield a higher efficiency in the development of public policy initiatives; this could result in institutional centralisation and/or policy coordination for the development of a national digital agenda or a broadband plan or the creation of legislative consensus. For example, in Colombia, the *Vive Digital* plan was launched by the ICT ministry created in 2010 with the stated purpose of universal Internet usage. The plan was coordinated with efforts in demand promotion, stimuli to

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[42] ITU, above n 38, pp 25-26.

the launch of start-ups focused on content and applications development, and a reduction of taxation on the purchase of ICT products and services.

- Yet in other situations, the institutional change implies the "signalling" sent by the public sector to private enterprises that ICT and digital development represent a key factor in the development of the country; in a response to this "signal" the private sector (operators and other Internet players) react positively, accelerating their investment level and commercial aggressiveness. Thus, the public initiative may act as an implicit multiplier.

As expected, all three effects could manifest themselves simultaneously."

These benefits, seen from the development of ICT policies and regulatory frameworks – such as an acceleration in public ICT investment, higher efficiency in the development of public policy initiatives, better coordination or increased efforts from the private sector aimed at investment and competitiveness – should not be seen as unique to the Latin American countries examined in the report. This is an important driver for the development of ICT policies, and underscores the importance and need thereof.

As indicated above, the reference in this report to "free" access relates to it being free for the user, with the cost being carried either by the state, a private service provider or a sponsor. In a country with limited resources, these may appear to be a dissuasive factor in respect of attaining universal free access. But this cost should be seen in the context of the broader economic growth that can arise: higher levels of employment and productivity; the creation of new businesses and jobs; and more services being accessed via online platforms. In addition to the clear public interest benefits in making access to the internet universally accessible, there is also a strong economic argument in support of this that should be considered together with the cost of implementing the seven-point plan.

// PART II: UNIVERSAL AND FREE ACCESS THROUGH A RIGHTS-BASED LENS

"Member States and international organizations should promote access to the Internet as a service of public interest through the adoption of appropriate policies in order to enhance the process of empowering citizenship and civil society, and by encouraging proper implementation of, and support to, such policies in developing countries, with due consideration of the needs of rural communities. . .

Member States should recognize and enact the right of universal online access to public and government-held records including information relevant for citizens in a modern democratic society, giving due account to confidentiality, privacy and national security concerns, as well as to intellectual property rights to the extent that they apply to the use of such information. International organizations should recognize and promulgate the right for each State to have access to essential data relating to its social or economic situation."

- United Nations Educational, Scientific and Cultural Organization[43]

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[43] UNESCO, 'Recommendation concerning the promotion and use of multilingualism and universal access to cyberspace' at paras 7 and 15 (accessible at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/Eng%20-%20Recommendation%20concerning%20the%20Promotion%20and%20Use%20of%20Multilingualism%20and%20Universal%20Access%20to%20Cyberspace.pdf).

HUMAN RIGHTS FRAMEWORK

As noted in the APC Issue Paper, the ability to receive and impart information online, particularly through the internet, has become central to the exercise and enjoyment of fundamental rights and freedoms. This is so because—

> "[i]t enables people to engage in an array of learning experiences, build information and knowledge societies, foster public and private debate, establish organisations, and contribute to public interest innovation. Through the internet, all people with access, including those in remote and marginalised communities, are better able to exercise and protect their rights and realise their potential. Conversely, those without access are deprived of such protection and enjoyment."[44]

The APC Issue Paper notes further that there are two clear principles that arise from South Africa's regional and international commitments: first, there is a commitment – which is supported by the South African government – to ensure public access to information, which requires the proactive disclosure of information and the creation of an enabling environment conducive to the free flow of information; and second, central to this commitment in the digital age is the need to facilitate maximum universal online access to, at a minimum, public and government-held records.[45]

It is well-established under human rights law that the same rights that apply offline also apply online. In 2012, the UN Human Rights Council (HRC) passed an important resolution that "[called] upon all States to facilitate access to the Internet and international cooperation aimed at the development of media and information communications facilities in all countries".[46]

In a significant development in 2016, the HRC 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".[47] The HRC further recognised the global and open nature of the internet as a driving force in accelerating progress in various forms, including in achieving the SDGS.[48]

The resolution also affirmed the importance of applying a comprehensive rights-based approach in providing and in expanding access to internet, and called on states to consider formulating and adopting national internet-related public policies with the objective of universal access and the enjoyment of human rights at their core.[49] Two categories of persons were recognised as being deserving of special attention:

- *Women and girls:* The first relates to women and girls. The resolution echoes the call contained in the SDGs for states to bridge the gender digital divide and enhance the use of enabling technologies, in particular ICTs, to promote the empowerment of all women and girls.[50]

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[44] APC, above n 4, p 1.
[45] *Id.* at p 5.
[46] HRC, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/20/L.13, 29 June 2012 at para 2. This was expanded upon further the following year in HRC, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/Res/26/13, 14 July 2014.
[47] HRC, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/32/L.20, 27 June 2016.
[48] *Id.* at para 2.
[49] *Id.* at paras 5 and 12.
[50] *Id.* at para 6. In the context of South Africa, this should arguably be extended to all children, regardless of gender.

- **Persons with disabilities:** The second relates to persons with disabilities. In this regard, the resolution calls on states to take appropriate measures to promote the design, development production and distribution of ICTs and systems that are accessible to persons with disabilities.[51]

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."

In the regional context, also in 2016, the African Commission on Human and Peoples' Rights (ACHPR) 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.[52] The ACHPR 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.[53]

Domestically, the Constitution of the Republic of South Africa guarantees a right to information: section 16 provides for the right to freedom of expression, which includes the right to receive and impart information; and section 32 provides for the self-standing right of access to information. As noted in the APC Issue Paper, this has been described as a "*sine qua non* for every person's right to realise her or his full potential as a human being, free of the imposition of heteronomous power",[54] and "essential to the proper functioning of our constitutional democracy".[55] Various laws have been enacted to give effect to these rights, including the Promotion of Access to Information Act 2 of 2000 (PAIA) and the Protection of Personal Information Act 4 of 2013 (POPIA). These are justiciable rights, which can be enforced through the courts if the state fails to give effect to them in a constitutionally-compliant manner.

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[51] *Id.* at para 7.
[52] ACHPR, 'Resolution on the right to freedom of information and expression on the internet in Africa', ACHPR/Res.362(LIX), 4 November 2016.
[53] *Id.* at para 1.
[54] *Case and Another v Minister of Safety and Security and Others; Curtis v Minister of Safety and Security and Others* [1996] ZACC 7, para 29, accessible at http://www.saflii.org/za/cases/ZACC/1996/7.html
[55] *The Citizen 1978 (Pty) Ltd and Others v McBride* [2016] ZACC 30, para 141, accessible at http://www.saflii.org/za/cases/ZACC/2016/30.html. In an earlier judgment, the Constitutional Court stated further that:

> "Freedom of expression lies at the heart of a democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions and views freely on a wide range of matters."

See, also, *South African National Defence Union v Minister of Defence and Another* [1999] ZACC 7 at para 7: http://www.saflii.org/za/cases/ZACC/1999/7.html

ICTS AND SUSTAINABLE DEVELOPMENT

// State of Broadband 2019: Report of the Broadband Commission for Sustainable Development[56]

The Broadband Commission for Sustainable Development is established by the ITU and UNESCO to engage with issues relating to the use of ICTs and broadband-based technologies for sustainable development. In its 2019 report on the state of broadband globally, it makes the following policy recommendations for approaches towards meaningful universal connectivity:

- Embed a focus on digital inclusion in broadband plans and digital economy efforts, paying attention to the challenges of marginalised communities and vulnerable populations, particularly women and children.
- Amplify efforts to improve digital skills – including basic digital skills – to help users, small and medium enterprises and public sector agencies make the most of digital opportunities, as well as skills to distinguish online disinformation and other threats to the right to information, and so empower Internet users to avoid becoming either victims or unwitting distributors of disinformation.
- Add public access policies into universal access and service initiatives and national broadband plans, such as ensuring universal service and access policies explicitly include sites and locations where low-cost internet access may be facilitated (such as libraries, community centres, and areas of public gathering).
- Support effective and innovative spectrum policies to improve broadband availability for underserved and marginalised groups.
- Expand initiatives to map network coverage and infrastructure needs, developing priority lists for investment, including where subsidies are required.
- Include measures to protect children online in national broadband plans.
- Support international and national efforts to provide broadband connectivity to refugees and displaced individuals.
- Include a focus on limiting environmental impacts and addressing climate change in national broadband plans.
- Encourage and evaluate both sustaining, as well as disruptive, ICT innovations across technologies, business models, and regulations.
- Promote the affordability of broadband by adopting appropriate policy and regulation.

Another source of commitments regarding ICTs arises from the SDGs in the context of the United Nations, and Agenda 2063 in the context of the ACHPR. The SDGs in particular recognise that "[t]he spread of [ICTs] global interconnectedness has great potential to accelerate human progress, to bridge the digital divide and to develop knowledge societies".[57] In terms of the SDGs, states are further implored to enhance the use of ICTs and other enabling technologies to promote the empowerment of women,[58] and to strive to provide universal and affordable access to the internet in the least developed countries by 2020.[59]

The ITU has noted that ICTs can accelerate all of the seventeen SDGs.[60] In particular, in respect of SDG 9 – helping to build resilient infrastructure, promoting inclusive and sustainable industrialisation and fostering innovation – the availability of efficient and affordable ICT infrastructure and services allow

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56 Broadband Commission for Sustainable Development, 'The state of broadband 2019: Report highlights', September 2019, accessible at https://www.itu.int/en/mediacentre/Pages/2019-PR16.aspx.

57 United Nations General Assembly, 'Transforming our world: The 2030 agenda for sustainable development', A/Res/70/1, 21 October 2015 at para 15.

58 Goal 5(b) of the SDGs.

59 Goal 9(c) of the SDGs.

60 ITU, 'ICTs to achieve the United Nations Sustainable Development Goals', accessible at https://www.itu.int/web/pp-18/en/backgrounder/6050-icts-to-achieve-the-united-nations-sustainable-development-goals.

countries to participate in the digital economy and to increase their overall economic well-being and competitiveness.[61] This has a significant impact in the areas of financial inclusion, poverty reduction and improved health. As noted further by the ITU, ICTs are able to achieve results at a scale, speed, quality, accuracy and cost in the areas of health care, education, finance, commerce, governance and agriculture, among others, and further help to reduce poverty and hunger, boost health, create new jobs, mitigate climate change, improve energy efficiency and make cities and communities sustainable.[62]

> ### // Interplay between Sustainable Development, ICTs and Climate Change[63]
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> The interplay between sustainability, ICTs and climate change bears special mention. As noted by the ITU, ICTs such as satellites, mobile technology and the internet play a key role in addressing the major challenges posed by climate change. In this regard, the ITU notes further that "ICTs are fundamental for monitoring climate change, mitigating and adapting to its effects, and assisting in the transition towards a green economy.
>
> In terms of the Connect 2020 Agenda, which sets out the vision, goals and targets that the ITU and its member states have committed to achieve by 2020, there are two key targets aimed at reducing the environmental impact of the ICT sector: (i) the volume of redundant e-waste is to be reduced by 50% by 2020; and (ii) greenhouse gas emissions generated by the telecommunications and ICT sector is to be decreased per device by 30% by 2020.

Further to this, in September 2015, the African Union published Agenda 2063: The Africa We Want,[64] which sets out a series of aspirations for the future of the region, as well as critical enablers to realise those aspirations. This includes the following aspirations:

- *Modernised infrastructure:* That cities and other settlements are hubs of cultural and economic activities, with modernised infrastructure, and that people have access to affordable and decent housing with all the basic necessities of life, including ICT.
- *Technological transformation:* That the necessary infrastructure will be in place to support Africa's accelerated integration and growth, technological transformation, trade and development, including a well-developed ICT and digital economy.
- *ICT projects and services:* Under the call to action to connect Africa through world-class infrastructure, it provides that there should be a concerted push to finance and implement major infrastructure projects in, amongst others, ICT. In this regard, it envisions "a continent on equal footing with the rest of the world as an information society, an integrated e-economy where every government, business and citizen has access to reliable and affordable ICT services by increasing broadband penetration by 10% by 2018, broadband connectivity by 20 percentage points and providing access to ICT to children in schools and venture capital to young ICT entrepreneurs and innovators and migration to digital TV broadcasting by 2016".

POSITIVE AND NEGATIVE OBLIGATIONS ON THE STATE

Both under domestic and international law, the state holds positive and negative obligations in the realisation of all rights to which it has committed. This means that the state is required to take active measures to see the realisation of rights, and must refrain from acting in a manner that may infringe rights.

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[61] *Id.*
[62] *Id.*
[63] ITU, 'ICTs, sustainability and climate change', accessible at https://www.itu.int/en/action/climate/Pages/default-BAK.aspx.
[64] Accessible here: https://au.int/sites/default/files/pages/3657-file-agenda2063_popular_version_en.pdf.

In respect of the positive obligation on states regarding access to the internet, the 2011 Joint Declaration on Freedom of Expression and the Internet provides some guidance in this regard. In particular, the freedom of expression mandate-holders of the UN and ACHPR, among others, noted that as states are under a positive obligation to facilitate universal access to the internet, they should at a minimum put in place the following measures to fulfil this obligation:[65]

- *Regulatory mechanisms:* Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the internet, including for the poor and in rural areas.[66]
- *Support:* Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.[67]
- *Awareness:* Promote adequate awareness about both how to use the internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.[68] This is directly linked to the development and implementation of digital literacy skills.
- *Equitable access:* Put in place special measures to ensure equitable access to the internet for disabled and disadvantaged persons.[69]

To implement this, the mandate-holders stipulate that states should adopt detailed multi-year action plans for increasing access to the internet, which should include clear and specific targets, standards of transparency, and public reporting and monitoring systems.[70]

Added to this, states should refrain from taking measures that disrupt access to the internet or particular websites, as this can pose a severe and disproportionate restriction on the right to freedom of expression, as well as the enjoyment of a range of other rights and services, including mobile banking, online trade and the ability to access government services via the internet.

CURRENT POLICY FRAMEWORK

Three key policy documents are relevant to universal free access:

- *South Africa Connect: Creating Opportunities, Ensuring Inclusion – South Africa's Broadband Policy (SA Connect):* SA Connect came into effect in 2013, and is South Africa's national broadband policy and associated strategy for broadband access.[71] It notes that "the lack of always-available, high-speed and high quality bandwidth required by business, public institutions and citizens has impacted negatively on the country's development and global competitiveness".[72] The policy is based on four pillars: (i) digital readiness; (ii) digital development; (iii) building the digital future; and (iv) realising digital opportunity. The following principles underpin the SA Connect strategy: openness; service and technology neutrality; universality; equality; efficiency; coordination; transparency and accountability; innovation; complementarity; and future-proofing.[73]

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[65] International Mechanisms for Promoting Freedom of Expression, 'Joint declaration on freedom of expression and the internet', 1 June 2011, accessible at: https://www.osce.org/fom/78309?download=true. The 2011 Joint Declaration is signed by the UN Special Rapporteur on Freedom of Expression, the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression.
[66] *Id.* at para 6(e)(i).
[67] *Id.* at para 6(e)(ii).
[68] *Id.* at para 6(e)(iii).
[69] *Id.* at para 6(e)(iv).
[70] 2011 Joint Declaration at para 6(f).
[71] SA Connect, above n 33.
[72] *Id.* at pp 2-3.
[73] *Id.* at pp 13-14.

- *National Integrated ICT Policy White Paper (ICT White Paper):* The ICT White Paper came into effect in 2016. It describes itself as outlining the overarching policy framework for the transformation of South Africa into "an inclusive and innovative digital and knowledge society".[74] It is premised on the principles that, amongst other things, any intervention must be necessary to meet clearly defined public interest objectives; and such interventions must be proportionate, consistent and evidence-based, and determined through public consultation.[75] The ICT White Paper notes that "[f]acilitating access by everyone to the opportunities offered by the internet is in many ways therefore at the core of this White Paper."[76]

- *National e-Government Strategy and Roadmap (e-Government Strategy):* The e-Government Strategy was gazetted in November 2017. As explained in the document, e-government refers broadly to the innovative use of communications technologies, websites, applications and other ICT services and platforms to link citizens and the public sector to facilitate collaborative and efficient governance.[77] The strategic objectives include to ensure that all South Africans can access quality public service and government information from anywhere and at any time; to reduce the cost of public administration in South Africa; and to deliver integrated electronic services that will ensure a one-stop service portal.[78]

There are also a number of initiatives being undertaken or supported by the government to improve access. For instance, universal service and access obligations (USAOs) are licensing obligations imposed by the Independent Communications Authority of South Africa (ICASA) on telecommunications operators. Since 2014, ICASA has required the Vodacom, MTN and Cell C to each provide internet access to 1 500 schools across South Africa within five years, and to provide each school with three teacher laptops and 24 learner laptops.[79]

The Internet For All initiative is another important initiative, which is a partnership between WEF and Department of Communications and Digital Technologies (DCDT). In terms of this initiative, the aim is to connect 22 million South Africans to the internet by 2020.[80] The focus is on extending ICT infrastructure to underserved areas, lower the costs of being online digitising local content and providing relevant skills.[81]

The Mzansi Libraries Online (MLO) Project is another initiative that seeks to empower communities by providing free access to the internet and ICT equipment at public libraries.[82] The MLO is a project of the National Library of South Africa, in collaboration with the Department of Arts and Culture and funded by the Bill and Melinda Gates Foundation.[83] The MLO Project aims to empower disadvantaged communities through increased access to ICTs and to enhance skills and capacity.[84]

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[74] ICT White Paper, above n 6, p 3.
[75] *Id.* at p 12.
[76] *Id.* at p 48.
[77] DTPS, 'National e-Government Strategy and Roadmap', November 2017, p 5, accessible at https://www.ellipsis.co.za/wp-content/uploads/2017/04/gg41241-National-e-Government-Strategy-and-Roadmap.pdf.
[78] *Id.* at p 17.
[79] 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).
[80] SA News, 'Internet for All by 2020', 24 May 2017, accessible at https://www.sanews.gov.za/south-africa/internet-all-2020.
[81] *Id.*
[82] National Library of South Africa, 'Mzansi libraries online project', p 1, accessible at http://www.nlsa.ac.za/wp-content/uploads/2019/03/MLO_NewsLetter1.pdf.
[83] *Id.*
[84] *Id.*

THE NEED TO UPDATE THE EXISTING POLICY FRAMEWORK

As explained by Research ICT Africa, an ICT policy framework should, as a starting point, address the following key components in order to work towards universal access and overcome the digital divide:[85]

- *The establishment of an independent regulator:* It is noted that ineffectual regulation, together with poorly implemented universal strategies, are some of the primary reasons for the lag in voice and broadband penetration and the relatively high cost of services in developing countries. Independent regulation plays a key role in dealing with the complexity and dynamism of these multi-player markets that comprise both public and private sector actors. However, the regulator must enjoy both structural and functional independence, including appropriate resourcing, to fulfil its mandate in the public interest. In South Africa, ICASA is the communications regulator, established by statute.

- *Privatisation:* For many developing countries, privatisation is a key vehicle for financing network extensions. It should be noted, however, that "privatisation produces enormous asymmetries of information that require significant capabilities on the part of government to be managed effectively".[86] Where privatisation of infrastructure and services is employed as a means of facilitating universal access, it must be complimented by the availability of dedicated agencies responsible for the oversight of the privatised entities, to ensure that they fulfil their mandates and contribute towards national objectives.

- *Universal service funds and strategies:* In order to extend the benefits of connectivity, regulators and policy-makers have a number of tools available to increase coverage and access in underserved areas, such as universal service fund (USF) levies paid by the telecommunications operators, typically as a condition of their licence to operate in the particular country.[87] According to the GSMA, however, the reality is that developing countries around the world have large, untapped USFs, with studies showing that more than half of the funds collected for USFs across the world having never been utilised, and over a third of USFs having not distributed any of the levies collected.[88] The failure to appropriately distribute the USFs presents a double disservice to the poor as they increase costs without the desired commensurate benefit. More systematic interventions are needed to support effective ways of delivering services and targeting the real access gaps.

- *Liberalisation of markets:* Infrastructure bottlenecks and high barriers to entry are hallmarks of ICT markets, and have contributed to the market failure associated with the delivery of services to areas regarded as uneconomic to service. As noted by Research ICT Africa: "Even if state owned enterprises do not face direct competition in the market segment in which they operate, fair access and pricing for their facilities needs to be ensured".[89] This, however, requires specialised and resource-intensive activities, as well as appropriate capabilities and capacity to regulate this effectively. Strategic regulation is needed to enable innovative service provision, particularly to underserviced areas, and fair competitive markets to promote the viability of new entrants.

- *Affordability:* The central public policy challenge facing African decision-makers responsible for ICTs remains that of ensuring affordable access to services. Factors that affect affordability include the cost of devices; the applicable distribution and retail channels; network equipment; and taxes, including excise duties. Achieving affordable access to services has to be accomplished while creating conditions for the development of infrastructure, which requires an integrated strategy to achieve both developmental and growth objectives. According to Research ICT Africa: "Universal service strategies cannot simply focus on issues of coverage and access. With most access to communications in the

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[85] Research ICT Africa, 'ICT4D, regulation and strategy', 2015, accessible at
https://researchictafrica.net/publications/Other_publications/2015_Gillwald_-_ICT4D_Regulation_and_strategy.pdf
[86] *Id.* at p 3.
[87] GSMA, 'Are Universal Service Funds an effective way to achieve universal access?', 18 April 2018, accessible at
https://www.gsma.com/mobilefordevelopment/programme/connected-society/universal-service-funds-effective-way-achieve-universal-access/.
[88] *Id.*
[89] Research ICT Africa, above n 85, p 4.

developing world provided by mobile operators, effective regulation of this market has become key to ensuring affordable access to communications services. For regulators, this requires a balance between maintaining an environment for continued investment in next-generation technologies that have driven mobile uptake – particularly of broadband services – while ensuring positive consumer welfare outcomes".[90]

- *The impact of convergence:* Digitisation has allowed for convergence within telecommunications – between fixed and mobile services that were previously operated on separate networks – and for convergence of historically distinct platforms for broadcasting and telecommunications. It has therefore become necessary for policy-makers to create a regulatory framework and licensing regime appropriately suited to the convergence of broadcasting and telecommunication infrastructure and services.

- *Digital literacy:* The importance of digital literacy cannot be gainsaid, and needs to be firmly entrenched – and realised – through effective and committed policy and regulatory undertakings. This should reflect a commitment to develop skills across all affected sectors of society, from children to the elderly and particularly in marginalised groups, in order to effectively realise the desired outcomes of universal access. Such skills should go beyond basic literacy skills, and include interventions that enable the user to meaningfully access the internet and other ICTs, distinguish between mis- and dis-information, and use the internet for personal growth and development.

A particular aspect that bears highlighting is that of spectrum allocation as new bands become available, and the role that this has on access to the internet. The Broadband Commission for Sustainable Development has noted that 5G spectrum bands will enable developing countries to make full use of artificial intelligence, cloud computing and data analytics. As such, ICT policies should consider not just how to allocate existing spectrum, but also new bands of spectrum to facilitate competition and new entrants into the market, and thereby improve access to the internet.[91]

South Africa's national broadband policy – SA Connect – was developed in 2013. Given the rapid pace of technological advancement, it is already at risk of being out of date, with the targets and processes stipulated in SA Connect having been largely revised and reimagined. Importantly, the policy needs to provide clarity on the current targets for achieving universal access and the responsible stakeholders, so that there can be certainty and accountability for the fulfilment of these commitments.

Further to this, new issues that were not of priority when SA Connect was finalised have now become pressing issues that need to be addressed. This includes, for instance, issues regarding the Fourth Industrial Revolution, artificial intelligence, the use of big data, 5G spectrum and other related issues. While the Fourth Industrial Revolution (4IR) has become an issue of priority for the government – including through the establishment of the Presidential Commission on the Fourth Industrial Revolution – it must be emphasised that the real benefits of the Fourth Industrial Revolution cannot be realised holistically in the country unless there is universal access.

As set out in the next section, universal and free access to online information is both realistic and attainable in South Africa. In addition to the existing measures being implemented, the seven-point plan discussed below offers a holistic approach to universal access that addresses the needs of all members of society, including the most vulnerable and marginalised who may otherwise be excluded.

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[90] *Id.* at pp 4-5.
[91] Broadband Commission for Sustainable Development, 'The state of broadband: Broadband catalyzing sustainable development', September 2018, p 16, accessible at https://www.itu.int/dms_pub/itu-s/opb/pol/S-POL-BROADBAND.19-2018-PDF-E.pdf. ba

// PART III: THE SEVEN-POINT PLAN

"The Human Rights Council, . . .

Calls upon all States to bridge the digital divides, including the gender digital divide, and to enhance the use of information and communications technology, in order to promote the full enjoyment of human rights for all, including by:

(a) Fostering an enabling online environment that is safe and conducive to engagement by all, without discrimination and with consideration for individuals facing systemic inequalities;

(b) Maintaining and enhancing efforts to promote access to information on the Internet as one means of facilitating affordable and inclusive education globally, underlining the need to address digital literacy and the digital divides;

(c) Promoting equal opportunities, including gender equality, in the design and implementation of information and communications technology and in mainstreaming a gender perspective in policy decisions and the frameworks that guide them;

(d) Applying a comprehensive human rights-based approach in providing and expanding access to information and communications technology, and promoting, in consultation with all sections of society, including business enterprises and civil society actors, policies and guidelines for information and communications technology that include specific attention to gender considerations".

- United Nations Human Rights Council[92]

OVERVIEW OF THE SEVEN-POINT PLAN

There are seven inter-related components to the proposed plan to achieve universal and free access to online information in South Africa. The seven-point plan is therefore as follows:

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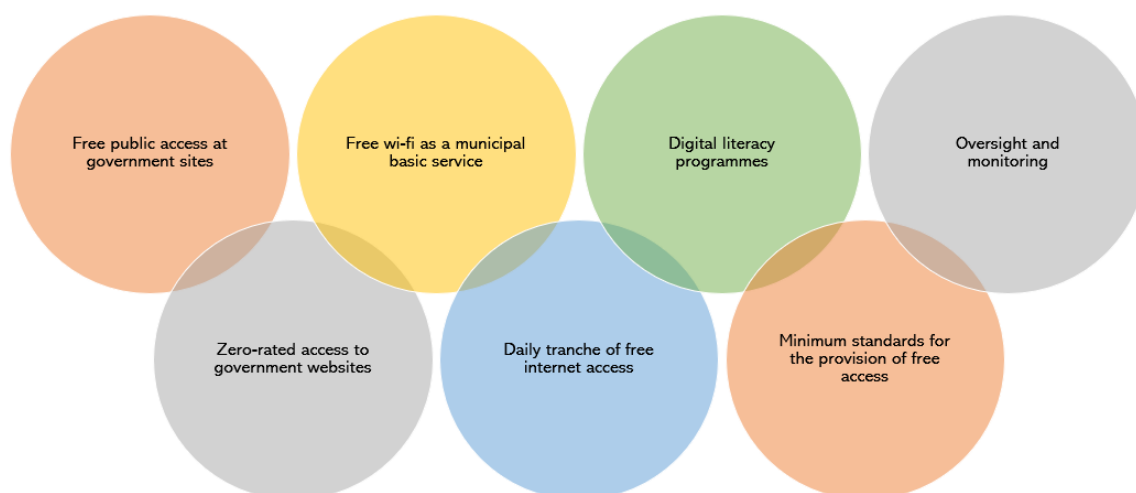
92 UNHRC, Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet, A/HRC/38/L.10/Rev.1, 4 July 2018, accessible at https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/203/73/PDF/G1820373.pdf?OpenElement.

Through the seven-point plan, the aim is to address three overarching themes:

- *Access to relevant content:* The first theme seeks to provide access to relevant content. This includes aspects of the seven-point that are geared towards getting people online, for free, so that the cost of access does not present an insurmountable barrier.
- *Safety of access:* The second theme seeks to ensure that, once people are online, they are safe and free from harm. This requires appropriate media and information literacy skills development to empower users with the necessary information, and to ensure that safeguards underpin the systems themselves to protect the rights of users.
- *Implementation of access:* The third theme relates to a process of setting targets, acquiring the relevant data to monitor the extent to which the targets are being met, and engaging in a process of evaluation to ensure that the seven-point plan and other related initiatives are appropriately implemented and the aims realised.

These three themes, borne out through the seven-point plan, present a holistic and mutually reinforcing approach to universal access to online information:[93]

- *The value of the internet:* Spreading awareness of the internet's value, encouraging its cultural acceptance and helping people acquire the skills to go online are top priorities. These efforts need to be based on an understanding of local conditions and customs, especially of how families and communities influence learning and exposure to new ideas.
- *Digital literacy and skills development:* Governments, private-sector players, civil society and local and international organisations can all combine to promote basic skills building. For widespread digital use to take hold and digital economies to grow, governments need to address literacy and educational enrolment issues, as well as the use of ICT tools in education. Advanced ICT skills are essential to putting the internet to work in businesses and developing digital economies.
- *Establishing connected facilities for community use:* Connected facilities in remote or hard-to-reach regions can provide centralised venues for communities to be exposed to the benefits of internet access.
- *Fostering online engagement:* Individuals and communities that become connected and are encouraged to engage online soon recognise the internet's value. They find a world of information and assistance; the latter often comes from international communities, organisations or institutions of civil society committed to using the internet to expand ICT skills.

Each aspect of the seven-point plan is detailed in turn below, together with relevant considerations for the implementation as well.

1 // 7: FREE PUBLIC ACCESS AT GOVERNMENT SITES

Public access in context

While there is no commonly agreed definition of "public access", APC suggests that this usually refers to 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.[94] This provides an opportunity for persons who are not connected to the internet to make 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.[95]

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[93] *Id.* at pp 5-6.
[94] APC, 'Public access: Supporting digital inclusion for all', May 2014, p 1, accessible at https://www.apc.org/sites/default/files/APC_PublicAcccessBriefing_20140513_0.pdf.
[95] *Id.*

Public access at government sites assists persons in overcoming challenges such as high costs, lack of devices with internet connectivity, or lack of electricity.[96] In this regard, public access should include both the ability 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. Furthermore, this should be provided on a free basis, either wholly or subject to a cap, to ensure that cost is not in itself a prohibiting factor for persons who want to make use of the internet.

Role of government sites in community connectivity

For people who cannot afford their own equipment and connectivity, or who only have access in their place of work, public access facilities could offer an effective alternative; however, there is limited investment in libraries, telecentres and multi-purpose community centres amenable to provision of public internet access.[97] APC notes that support for provision of public access has unfortunately fallen off the agenda in most countries as a result of the rapid growth of internet-connected mobile phones, which has reinforced the widely held view that public access is just a stepping stone to private access.[98]

This is similarly recognised in the ICT White Paper, which states that:[99]

> "Public institutions fulfilling specific public needs (e.g. schools, clinics and hospitals, police stations, etc.) have important roles to play in meeting citizens' needs in a digital society. Due to their central roles in communities, they can be key vehicles for the delivery of shared ICT services. If digital government, e-health, e-education and other digital public service objectives are to be met, certain public offices, clinics and hospitals, schools and educational institutions will potentially require higher bandwidth and more robust, reliable and affordable access. Once their particular baseline requirements have been established (which too could evolve over time), achievement of this will need constant evaluation.
>
> …
>
> Subsidies for such entities might also include obligations to extend access to others. In many countries, connecting a school is often the first step to connecting a community – and schools that have been subsidised are given obligations to make the funded ICT services available to the community on weekends or after hours."

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96 *Id.*
97 APC, above n 17, p 4.
98 *Id.*
99 ICT White Paper, above n 6, pp 35-36.

Targets for connecting government sites in South Africa

SA Connect set the following targets in respect of access at government sites:[100]

Target	Penetration Measure	Baseline (2013)	By 2016	By 2020	By 2030
Broadband access in Mbps user experience	% of population	37,5% internet access	50% at 5 Mbps	90% at 5 Mbps 50% at 100 Mbps	100% at 10 Mbps 80% at 100 Mbps
Schools	% of schools	25% connected	50% at 10 Mbps	100% at 10 Mbps 80% at 100 Mbps	100% at 1 Gbps
Health facilities	% of health facilities	13% connected	50% at 10 Mbps	100% at 10 Mbps 80% at 100 Mbps	100% at 1 Gbps
Government facilities	% of government offices		50% at 10 Mbps	100% at 10 Mbps	100% at 100 Mbps

Access at government sites is dealt with under the digital development pillar of SA Connect. The aspects addressed under this pillar of SA Connect are the pooling of public sector demand; public sector networks; and open access to network regulation.[101] The policy indicates the following intended outcomes:

- *Network capacity:* This includes high capacity future-proof network capacity procured for key public sector broadband needs at more affordable rates.
- *Reduced expenditure:* This includes the government's ongoing operational communications expenditure reduced through upfront capital expenditure.
- *Reduced risk:* This includes the risk of investment in network extensions for operators reduced through anchor tenancy.

Notably, SA Connect identifies the following indicators for achieving the above intended outcomes: speed, quality and cost of network capacity at government facilities; speed and rollout of quality service; network reach and price of access; increased investment by network operators; and the take up of services in the public sector, schools and clinics.

While the targets are commendable, SA Connect has been plagued with challenges in meeting its stipulated targets, and there has been a significant delay in the roll-out and implementation of broadband access in line with the policy.[102] In terms of the new implementation model of SA Connect, the DCDT has indicated that SA Connect will result in the provision of broadband services to 970 government sites by the 2021/2022 financial year.[103] However, in order for the government to fully meet its targets under SA Connect, it would need to provide internet access to more than 38 000 government facilities.[104]

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[100] SA Connect, above n 33, pp 18-19. The policy notes that the minimum average targets will be reviewed annually.
[101] *Id.* at p 54.
[102] For a history of the implementation of SA Connect, see IT Web, 'SA Connect: Another year, another moving target', 22 February 2019, accessible at https://www.itweb.co.za/content/lwrKxv3JRQGqmg1o.
[103] *Id.*
[104] Hypertext, 'All 38 000 public facilities where government plans to provide internet', 14 December 2015, accessible at https://www.htxt.co.za/2015/12/14/map-monday-3/.

// Progress Report on the Implementation of SA Connect[105]

In March 2019, the DCDT informed Parliament as follows:

- The annual budget allocation for SA Connect was R9,7 million for 2018/19, which was only adequate to rollout connectivity to 63 facilities.
- A rollover amount of R110 million was approved at the end of August 2018 and consequently the bulk of the connectivity rollout to 507 facilities could only begin in September 2018.
- The number of facilities connected in the first and second quarters were 63, while broadband connectivity was provided to 194 facilities in the third quarter.
- In January 2019 a fast-track plan was devised to expedite service activations to be in line with the annual target.
- Only 36 of the 194 targets for the third quarter were connected because of budget constraints, and because unforeseen infrastructure replacement placed limitations on the speed of implementation. Further, the 2017/18 budget rollover was granted later than anticipated, resulting in delays in issuing purchase orders for connectivity.
- Therefore, 129 of the annual target of 570 were connected to date, with 441 still to be connected.
- 291 of the 441 infrastructure installations completed were awaiting service activations, and 150 of 441 infrastructure upgrades were underway.
- There was no broadband infrastructure rollout target for the first and second quarters, and the third quarter target of broadband infrastructure rollout to 313 facilities had been met.
- All 313 broadband infrastructure installations were tested. Minor technical issues experienced at some facilities were being resolved, and 22 of the 313 had services activated.
- Proactive installations of broadband infrastructure to an additional 400 facilities, where connectivity was planned for 2019/20, had commenced and to date, broadband infrastructure installations to 137 of these 400 facilities have been completed.
- Stakeholders were regularly engaged, through provincial steering committees, to provide project status updates and to ensure alignment between SA Connect and provincial broadband plans.
- The DCDT conducted ad hoc physical facility audits to verify broadband infrastructure installations and internet services assessment tests to ensure adherence to the requirements specification.
- SA Connect had trained 100 small, medium and micro-enterprises on installation, and 26 were participating on SA Connect's programme of work.
- The DCDT indicated that R1 billion has been provisionally allocated for SA Connect's implementation for the 2021/22 financial year.

Going beyond simple access

Providing access at government facilities is particularly important in remote areas, where such facilities can provide centralised venues for communities to access the internet.[106] This can serve several purposes. Most commonly, they can offer basic infrastructure, such as shared access points for the local community, which in some instances might be the only access available. Further, they can also help in reducing the cost of access for users.

However, government facilities have an opportunity to go beyond simple access. In this regard, the Vive Digital Points initiative in Colombia is a useful example. Through this initiative, users gain access to computers and the internet at government facilities, but are also offered digital training at these facilities; it is reported that more than 100 000 people across the country have been trained as part of this

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[105] DCDT, 'SA Connect progress report', 12 March 2019, accessible at https://pmg.org.za/committee-meeting/28096/.
[106] WEF, above n 5, p 20.

initiative.[107] The government facilities also make available a repository of relevant information online, that users can access to receive training on a range of different technologies, upskill themselves and learn how to make use of the internet more effectively.[108]

In South Africa, SmartCape has been a prominent initiative in the Western Cape in providing universal free access to users.[109] Through this initiative, free wi-fi has been offered in over 100 buildings across Cape Town, such as clinics, administration buildings, traffic departments and cash offices; there is further a plan to roll this out at transport interchanges.[110] Users are provided with 50 megabytes of free data per month.[111] Furthermore, there are public computers available in all the libraries in Cape Town, with librarians who are trained to assist users to get online., at which registered library users can use for 45-minute sessions per day.[112]

Overall, however, free public access at government facilities has had limited roll-out in South Africa. Support for public access needs to be made more explicit, as there is an important role that public access facilities play. Not all content can be consumed on mobile devices; as noted by APC, for instance, large-format screens and high-definition multimedia provide a more immersive learning, professional or entertainment experience, but may be too slow or costly via a mobile connection.[113] Furthermore, access to devices that are better adapted to word processing is critical for persons who may need to type documents, apply for jobs, and so on.

Key considerations for implementation

The following are among the key considerations for the implementation of this aspect of the seven-point plan:

- *Awareness-raising and an enabling environment:* There needs to be increased recognition of the importance of public access to the internet at government facilities. While the SA Connect targets speak to connecting government facilities, the policy does not go far enough in drawing a clear link in offering such connectivity to the surrounding communities more broadly, particularly in remote areas. It would also be of assistance for public certainty if a new iteration of SA Connect targets were made available, instead of the current state of moving targets.
- *Appropriate allocation of resources:* In order to meaningfully realise public access at government facilities, there needs to be appropriate resources allocated from all relevant levels of government. This should serve to ensure that there are sufficient devices available to meet the community need; that such devices are of appropriate technical specifications; and that there is appropriate connectivity to ensure fast and uninterrupted access to the internet.
- *Technical training to support public access facilities:* In addition to the above resources, such facilities should also have appropriately trained persons to assist members of the public in accessing the internet and making use of other ICTs. These persons would also be responsible for ensuring the maintenance of the devices, and the implementation of appropriate security safeguards. Added to this, these resource persons should also be in a position to assist members of the community with understanding the benefits of access to the internet and how to make the most effective use of the ICTs available to them.
- *Going beyond simple access:* Public facilities should consider going beyond simple access, and also offer members of the community the opportunity to upskill. This might include, for instance, accessibility and availability of relevant content on the devices in the public access facilities that offer particular

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[107] WEF, above n 5, p 20.
[108] *Id.*
[109] Accessible at http://www.capetown.gov.za/Explore%20and%20enjoy/Get-online/Public-Wi-Fi-zones/Public-Wi-Fi-across-the-city.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] APC, above n 94, p 2.

forms of training or skills development, or the resource persons offering skills training to the members of the community in which the facility is based.

- **Security:** There are several elements relevant to the issue of security. Any devices made available for public access at a government facility must be both physically and digitally secured. A failure to do so might result in the broader programme being undermined, as well as the possibility of diminished trust in the internet and ICTs. On the flipside, particularly where the government facility is a school, there may also be relevant security concerns about protecting the primary users, such as the school learners. This would therefore be in the discretion of the government facility to establish an appropriate regime for public access, such as making it available after hours or over weekends if such security concerns arise.

- **Prioritisation of remote areas:** Remote areas should be prioritised, as persons living in such areas are unlikely to have other places at which they can connect to the internet. For persons in remote areas, public access at government facilities might be the only way in which they are able to connect. Targets and implementation plans aimed at giving effect to this aspect of the seven-point plan should therefore prioritise persons living in remote access, in an effort to address the current state of the digital divide.

2 // 7: ZERO-RATED ACCESS TO GOVERNMENT WEBSITES AND DATA

The e-Government Strategy

The UN explains that e-government can be defined as the use of ICTs to more effectively and efficiently deliver government services to citizens and businesses.[114] It is the application of ICT in government operations, achieving public ends by digital means.[115] The underlying principle of e-government, supported by an effective e-governance institutional framework, is to improve the internal workings of the public sector by reducing financial costs and transaction times so as to better integrate work flows and processes and enable effective resource utilisation across the various public sector agencies aiming for sustainable solutions.[116]

A comprehensive e-government strategy includes the following programmes: government to government programmes, which are concerned with the interaction between different levels of government and collaboration with government agencies; government to citizen programmes, which involves an interaction between government and its citizens; government to employee programmes, which involves the relationship between government and its employees to bring employees together and promote knowledge-sharing among them; and government to business programmes, which is concerned with supporting business activities.[117]

The e-Government Strategy sets out six guiding principles for developing and implementing e-government initiatives and services in South Africa:[118]

- **Interoperability:** This requires government ICT systems to include the sharing and exchange of electronic messages and documents, collaborative applications, distributed data processing and report generation, seamless transaction services, and so on.

- **ICT security:** Electronic documents, data and ICT systems must be protected from unauthorised access, malicious code and denial-of-service attacks. As such, interoperability needs to be achieved without compromising on ICT security.

- **Economies of scale:** The development of local ICT skills that are crucial to e-government initiatives should be encouraged, and ICT research should be steered towards answering service delivery

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[114] UN, 'e-Government knowledgebase', accessible at https://publicadministration.un.org/egovkb/en-us/About/UNeGovDD-Framework.
[115] *Id.*
[116] *Id.*
[117] E-Government Strategy, above n 77, pp 11-12.
[118] *Id.* at pp 18-21.

imperatives through the government's economic power. It is also important to have dedicated funding for e-government implementation by the different government departments, to be managed by the National Treasury.

- *Eliminate duplication:* Government must abolish unnecessary duplication of similar ICT functions, projects and resources.
- *Adopting indigenous languages in ICT applications:* The content of the e-government services platforms and applications should be in the languages predominantly used in the provincial and local areas, in order to drive uptake and use of the e-services.
- *Digital inclusion:* Failure to provide access to the previously disadvantaged communities will further impede any effort on electronic government initiatives, and the use of ICTs in government must ensure that all relevant persons have equal access.

Essentially, through e-government and innovation, governments can be enabled to be more efficient, provide better services, respond to the demands of citizens for transparency and accountability, be more inclusive and thus restore the trust of citizens in their governments.[119]

According to the European Commission, improving digital skills among public sector employees is vital to reaping the benefits of e-government.[120] In particular, digital assistance initiatives should be spearheaded to support members of society who are unable to access online services themselves.[121]

One of the primary initiatives set out in the e-Government Strategy is the development of a national e-government central portal, that would become "the front-end of government" and provide a single view of every citizen.[122] This was envisaged to provide information and transactional services. In terms of the other deliverables, the roadmap set out in the e-Government Strategy sets out the following targets:

// e-Government Strategy: Roadman and Targets[123]

e-Government Strategic Outcome	Deliverables	Target (3 years)
e-Government Services Transformation	Develop a standardised national eservices portal to allow for a connected government	2016-2018
	Identify citizen facing public services that are candidates for electronic service delivery and consolidate them on the national e-services portal	2017-2018
	Develop a National Electronic Identity System	2018-2021
	Establish common service centres and mobile sites to increase access to services	2018-2022
	Design and implement mobile innovations for offering mobile services	2018-2020
e-Enhanced Governance	Develop and approve of a National e-Government Strategy and Roadmap	2017
	Develop a 3-year e-Services Implementation Plan	2017
	National audit of government ICT systems	2016-2018
	Common e-Government ICT Infrastructure Program	2017-2018
	Develop an Open Government Framework	2018-2019

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[119] UN, above n 114.
[120] *Id.* at p 39.
[121] *Id.*
[122] *Id.* at p 26.
[123] DTPS, e-Government Strategy, 2017.

	Review catalogue of public services across all spheres of government	2021-2022
	Digitalisation of Government Business Services	2017-2019
	Harmonise the policy environment and legislative framework through the review and amendment of all legislations affecting e-Government to harmonise the frameworks and to improve service delivery through ICTS.	2017-2020
	Establish Cabinet Inter-Ministerial Digital Transformation Committee that will champion the implementation of e-Government in South Africa	2017-2018
Digitally-enabled Society	Develop e-Skills programmes for rural and underserved communities. Establish centres of excellence in the municipalities and provinces to capacitate and empower rural areas	2017-2021
	Develop programme for re-skilling and capacitating the government employees to provide e-Services	2018-2021
	Develop monitoring and evaluation strategy for e-Government	2018-2019
	Establish a monitoring and evaluation system for e-Government implementation in South Africa	2018-2021
	Develop communication and awareness plans for e-Government services roll-out across all levels of government to drive change management towards a paperless government	2017-2018
	Implement communication and awareness plans for e-Government services roll-out	2018-2021

In Gauteng, for example, the provincial government has established a Department of e-Government, which is focused on ICT and innovation in the province, and has been allocated a budget of over R1 billion in 2019 to fund key projects.[124] This is intended to include the creation of an e-services platform to allow the public to connect with the government.[125]

According to the UN e-Government Survey 2018, pre-conditions for e-government include accelerating the building of sustainability and resilience include political commitment; public trust in e-government; national policy alignment; and policy integration and coherence in e-government approaches.[126]

Open government / open data

Open government data contributes to a more open, transparent and accountable public sector, and plays a key role in the realisation of constitutional values and the SDGs. As has been noted by the UN, "[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

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[124] SangoNet, 'R1,4 billion cash injection for Gauteng's e-government', 7 March 2019, accessible at http://www.ngopulse.org/article/2019/03/07/r14bn-cash-injection-gautengs-e-government.
[125] *Id.*
[126] UN, 'e-Government Survey 2018, 2018, accessible at https://publicadministration.un.org/egovkb/Portals/egovkb/Documents/un/2018-Survey/E-Government%20Survey%202018_FINAL%20for%20web.pdf.

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."[127] 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.[128]

The "promotion of 'open data' by government" is identified as a key mechanism in SA Connect to realise digital opportunity:[129]

> "Government recognises that it is a key collector and producer of large amounts of data that, when released publicly for reuse, can be used in new and innovative ways. A key roadmap project for the Broadband Council in support of ensuring digital opportunities are met, will be to advise the Minster of Communication on the requirements of an open data policy. Implementation of such a policy would promote free access to different spheres of government data, such as bus timetables, electoral registers, clinic schedules, so that it may bolster economic activity and efficiency, and in particular spur the development of locally relevant content and applications. The Council will need to advise on the necessary privacy policy to protect the rights of citizens, but this is likely to be compensated for by increasing transparency through access to open data."

Principles of Open Government / Open Data[130]

- Government should default towards making information and data open while not compromising people's rights to privacy and security.
- Personal, classified and confidential information will be protected.
- Identified data should be freely available for redistribution, use and re-use on conditions, including that the source of the data is identified, and that it is redistributed under the same terms and conditions.
- Data must be open (in the public domain for use and re-use with no restriction) and technically open (published in formats that are machine-readable and non-proprietary) so that it can be accessed by common, freely available software.
- All data and information should be easily discoverable and accessible

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South Africa has pledged to meet eight commitments under the 2016-2018 Open Government Partnership (OGP) Action Plan.[131] Notably, the government recognised that these OGP commitments could serve to improve public services, increase public integrity, more effectively manage public resources, create safer communities and increase corporate accountability.[132] South Africa's OGP commitments under the third action plan for the period 2016-2018 were as follows:

- *Strengthen citizen-based monitoring to enhance accountability and performance:* Support government departments to strengthen the voice of citizens in monitoring service delivery.
- *Open budgeting:* Civil society involvement in the budget process is enhanced to improve the progressive realisation of socioeconomic rights, and enable citizens to track public expenditure.
- *Back to basics programme:* Promote public confidence in local government by developing a toolkit for citizen engagement for local government and conducting annual citizen satisfaction surveys.

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[127] *Id.* at p 107.
[128] *Id.* at p 109.
[129] SA Connect, above n 33, p 49.
[130] ICT White Paper, September 2016, accessible at
https://www.dtps.gov.za/images/phocagallery/Popular_Topic_Pictures/National_Integrated_ICT_Policy_White.pdf.
[131] Accessible at https://www.opengovpartnership.org/members/south-africa/.
[132] *Id.* at p 17.

- *Develop an integrated and publicly accessible portal of environmental management information:* The portal will integrate spatial data on biodiversity, ecosystems, water, agriculture, protected areas, conservation areas, air quality priority areas, important bird areas and other environmental data to identify and map environmentally sensitive areas at a national level. Users of the portal will be able to view and interrogate the data in map format.
- *Institutionalisation of community advice offices as part of the wider justice network:* This commitment seeks to strengthen the advice office sector by ensuring that the sector has the skills to lead advocacy and communications initiatives critical for long-term sector sustainability. Skills and knowledge in networking and engaging civic groupings and government are critical for shaping policy and debates on the value and impact of the work of community advice offices. This is essential for the sector to be recognised (through a regulatory framework and/or legislation and has access to the funding from the fiscus).
- *Development of Pilot Open Data Portal for South Africa:* Piloting of an Open Data Portal for South Africa to make data already published by government available to the public in an accessible format.
- *Roll-out open government awareness-raising campaign:* Develop and implement a campaign regarding the OGP commitments and initiatives.
- *The establishment of an Inter-Departmental Committee responsible for developing, implementing and reporting on a country implementation / action plan:* Implement South Africa's action plan on the G20 High Level Principles on Beneficial Ownership Transparency and implement a register of legal persons and arrangements which is available to the public in open data formats, in order to protect the integrity and transparency of the global financial and public procurement systems:

In February 2019, the Independent Reporting Mechanism of the OGP published the end-of-term report for South Africa's 2016-2018 action plan.[133] In summary, it found as follows: "Under the third action plan, South Africa advanced open budgeting and citizen engagement through the launch of the Valeska Mali open budget portal; the GovChat engagement application; and the extension of citizen-based monitoring at payment points of the South African Social Security Agency. Following significant changes in government administration, which delayed the finalisation of the self-assessment report and development of the fourth action plan, interim arrangements are in place to put the OGP process back on track."

Zero-rating government information

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 aspect is referred to as 'zero-rating', which is also sometimes referred to as 'toll-free data' or 'sponsored data'. In sum, zero-rating plans exempt particular data from counting against a user's data cap, or from accruing any excess usage charges.[134] The benefits of zero-rated services include that it allows for unlimited, no-cost access to certain services, and has the potential to drive demand for further internet access.[135]

Ultimately, while the operator or other entity carries the cost, the user is able to access the content for free. For instance, in South Africa, the website of the Department of Basic Education has already been zero-rated by Vodacom.[136]

This is a crucial tenet to this aspect of the seven-point plan. It is insufficient to make the relevant information or services available on the government website if the public lack the resources to be able to access this. With the high cost of data in the country, being able to access this relevant information may

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[133] Accessible at https://www.opengovpartnership.org/documents/south-africa-end-of-term-report-2016-2018/.
[134] Electronic Freedom Frontier, 'Zero rating: What it is and why you should care', 18 February 2016, accessible at https://www.eff.org/deeplinks/2016/02/zero-rating-what-it-is-why-you-should-care.
[135] Research ICT Africa, 'Much ado about nothing? Zero-rating in the African context', 12 September 2016, p 3, accessible at http://www.researchictafrica.net/publications/Other_publications/2016_RIA_Zero-Rating_Policy_Paper_-_Much_ado_about_nothing.pdf.
[136] Vodacom, 'Vodacom zero-rated websites', accessible at http://www.digitalclassroom.co.za/digitalclassroom/zero-rating.

be beyond the reach of some of the most vulnerable members of society for whom the information may be most pertinent.

As part of the e-Government Strategy, the relevant government entities should be expected to seek to engage in appropriate agreements with operators and service providers, to ensure that relevant information is zero-rated and therefore available for free to members of the public for whom the information is intended. It further bears mention that this strategy must also be cognisant of the digital divide, and must not exclude persons who lack the skills to be able to get online; as such, in addition to making the information available online on a zero-rated basis, traditional means of support should also be retained, including call centres and walk-in advice offices.

Striking the correct balance between zero-rating government websites and the principle of net neutrality

As indicated, it is proposed as part of the seven-point plan that access to government websites and services be zero-rated, so that the user does not have to incur data charges in accessing this online information. Conversely, there are concerns that zero-rating fosters discrimination among providers of online content and applications, and may challenge the principles of net neutrality.[137]

Net neutrality refers to the principle that internet service providers and governments should treat all data on the internet the same, not discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, or mode of communication.[138] Net neutrality remains a key tenet of the government's ICT policy. In this regard, as noted in the ICT White Paper, "[t]he principle of technological neutrality that has characterised the South African ICT policy and regulatory environment is retained and will be the cornerstone of the evolution of the policy and regulatory approach to this".[139]

Objectives of the Net Neutrality Framework[140]

- To promote the internet as a platform for freedom of expression, access to information, innovation and economic growth.
- To protect the rights of users to freely access legal content, applications and services on the internet and bar Internet intermediaries from unreasonably interfering with, or in any way disadvantaging, users' access to the Internet.
- To reinforce the right of government to protect citizens and deal with social and security problems associated with the internet.
- To bar the blocking, throttling or other unfair treatment of lawful internet content, services and applications by Internet intermediaries.
- To bar prioritisation of some traffic over other traffic in exchange for payment or benefit of any kind (including benefitting content from affiliates of intermediaries).
- To allow providers to put in place reasonable traffic management practices to enhance quality of service for users, while ensuring transparent and easily understandable information about such practices.

According to the ICT Policy Whitepaper:

> "The internet has made it possible for anyone to share and create their own content, services, applications, ideas and innovations – and for citizens around the world to have access to

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[137] *Id.*
[138] World Bank, 'Zero-rating educational content on the internet', 16 March 2016, accessible at https://blogs.worldbank.org/edutech/zero-rating-educational-content-internet.
[139] ICT White Paper, above n 6, p 44.
[140] ICT White Paper, September 2016, accessible at https://www.dtps.gov.za/images/phocagallery/Popular_Topic_Pictures/National_Integrated_ICT_Policy_White.pdf.

these. This has lowered the barriers to entry into the economy and extended the rights of access to information and freedom of expression for everyone.

It is crucial that the internet remains neutral and open if it is to continue to create opportunities for everyone to improve the quality of their lives. A crucial component of this is the introduction of a net neutrality framework to ensure that all lawful and legal internet traffic is treated equally, without discrimination, restriction or interference, regardless of the sender, receiver, content, device, service, or application."[141]

However, as noted by Research ICT Africa, zero-rating can usefully provide a gateway to the internet for first-time and price-sensitive users, and can enhance competition if employed by non-dominant mobile network operators.[142] This, in turn, has the potential to drive demand for general-purpose mobile internet access, and stimulate demand for paid data services in the future.[143] The considerations addressed below will be of assistance in striking the correct balance between proving zero-rated access to government information in the public interest, while simultaneously ensuring that the principle of net neutrality is not fundamentally undermined.

For the purpose of the seven-point plan, the proposed approach is one of fair access to information in the public domain, that is both relevant and useful to persons in the exercise of their fundamental rights, and does not create any unfair or competitive advantage for one entity over another.

Key considerations for implementation

The following are among the key considerations for the implementation of this aspect of the seven-point plan:

- **e-Government Strategy and OGP commitments:** South Africa should reaffirm its commitments in terms of the e-Government Strategy and the OGP, which should not only be focused on making information available but also accessible through the zero-rating of government information.
- **Public interest considerations:** As noted by Research ICT Africa, given the role that zero-rated services may play in providing the gateway to an open internet, an approach that prioritises the technical principle of network neutrality over other key public interest considerations should not automatically be accepted.[144]
- **Avoiding anti-competitive practices:** The zero-rating of government information and websites should avoid any anti-competitive practices, and should not provide any undue advantage to one entity over another. This zero-rating should not be used to throttle traffic or prejudice any other website or service provider.
- **Openness:** There should be a principle of openness in the zero-rating of government information and websites. This should include a public consultation process to determine which websites should be zero-rated and made freely accessible as part of this programme, and the steps taken to ensure that this does not unduly impede the principle of net neutrality.
- **Criteria for selection of websites:** Clear criteria should be set for which websites will be zero-rated, taking into consideration the public interest in zero-rating those websites. Other relevant websites may include, for instance, the websites of Parliament, the Department of Social Development and the South African Human Rights Commission.

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[141] *Id.* at pp 50-51.
[142] *Id.* Furthermore, for a discussion on the impact that zero-rating can have in South Africa, see: Research ICT Africa, 'Zero-rated services: What is to be done?', September 2015, accessible at https://www.researchictafrica.net/publications/Other_publications/2015_RIA_Facebookzerorating_policy_paper.pdf
[143] *Id.*
[144] *Id* at p 4.

Importantly, any website that is zero-rated as part of the seven-point plan must ensure that the content on the website is fair, balanced, accurate and up-to-date.

3 // 7: FREE PUBLIC WI-FI

Free public wi-fi as a growing service offering

Access to wi-fi has become relatively commonplace in South Africa. It has become a natural value-add to any venue, and is relatively inexpensive to offer.[145] As noted by Steve Song, there are several ways in which this is offered: for many businesses, it is offered for free as a way to draw customers in; in other cases, it is sold on a pay-as-you-go model like mobile broadband; there is also the third-party model where sponsors or advertisers cover the cost of bandwidth.[146]

It is therefore not surprising to see governments, enterprises and network operators putting up wi-fi infrastructure – but the key question to be determined is who should pay for the backhaul/bandwidth.[147] In some cases, the government underwrites the cost as a public good; in others, public-private partnerships have facilitated the access.[148]

There are multiple benefits to offering free public wi-fi. It is convenient in its range; it enables users to save on data charges; and it allows persons without internet access to do research, search for jobs, connect to social media and access relevant information.[149] However, there are also certain downsides. For instance, wi-fi hotspots are not widely accessible in rural areas; and because anybody can log onto a public wi-fi network, there is a higher risk of cybercriminals compromising the network.[150]

// Benefits and Shortcomings of Free Public Wi-fi[151]

Benefits	Shortcomings
Having public wi-fi is convenient as you would be able to work anywhere that has connectivity and at any time.	Wi-fi hotspots are not widely available in rural areas.
It allows those without internet access the ability to do research, search for jobs, as well as to connect to social media.	Some hotspots can limit access to a certain amount of data. Once that allocation is exhausted you may need to purchase a voucher.
Most of the government-funded public wi-fi's are free, which means you save money on data charges.	Public wi-fi is accessed by numerous people at the same time, which results in the network being slower because of user traffic.
Providing free wi-fi at schools, universities and colleges allows students as well as teachers to have access material for educational purposes such as e-books.	If you do not update your smartphone regularly, your device has a higher chance of getting infected by a virus.
Wi-fi technology applied to healthcare services largely improves hospitals and clinics performance. This is because doctors and other medical staff are	Because anybody can log on to a public wi-fi network that means cybercriminals can easily compromise the network and grab data at will.

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[145] Many Possibilities, 'African telecommunications infrastructure in 2018', 22 January 2019, accessible at https://manypossibilities.net/2019/01/african-telecommunications-infrastructure-in-2018/.
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] Hypertext, 'The current state of free public wi-fi in South Africa', 11 September 2018, accessible at https://www.htxt.co.za/2018/09/11/the-current-state-of-free-public-wifi-in-south-africa/.
[150] *Id.*
[151] Hypertext, 'The current state of free public wi-fi in South Africa', 11 September 2018, accessible at https://www.htxt.co.za/2018/09/11/the-current-state-of-free-public-wifi-in-south-africa/.

able to have instant access to a patient's clinical information among other things.	
It increases customer satisfaction with regards to the commercial sector such as restaurants, malls, bars and coffee houses, as you are able to surf the net while shopping or eating.	Wi-fi hotspots are often limited in range, which means the further you move from it the lower your performance might be.

Examples of free public wi-fi initiatives

It is reported that there are approximately 321 031 mobile open wi-fi spots in South Africa.[152] There have been a number of initiatives aimed at offering free public wi-fi. For example:

- *Project Isizwe:* In 2013, Project Isizwe, as a not-for-profit organisation, pioneered a free public wi-fi project in South Africa.[153] The project was funded by a grant, due to Project Isizwe's not-for-profit status, and provided 500 megabytes of free data daily to users; through the TSHWI-Fi initiative, over 3 500 000 unique users were connected and 276 million sessions logged.[154] Project Isizwe also developed a content portal that was designed to give users access to uncapped curated content.[155] The project ended in 2018.
- *Western Cape provincial government:* In 2016, the Western Cape government also launched a free public wi-fi initiative, starting with 50 free wi-fi hotspots.[156] At the time of launching, the provincial government noted that: "We're striving towards a Western ape where every resident in every town and village has access to affordable high speed broadband infrastructure and services, has the necessary skills to effectively utilise this infrastructure, and is actively using this in their day-to-day lives".[157] Through this initiative, users were given access to 250 megabytes of data and unlimited access to all .gov.za websites.[158] The wi-fi hotspots were mounted on the external walls of selected buildings, pointing outwards to the nearby communities being served, enabling any person within 200 metres of the hotspot to make use of the hotspot.[159]

// Community Networks[160]

Community networks refer to communications infrastructure deployed and operated by persons in their own communities to meet their own communication needs. This is increasingly being proposed as a solution to connect the unconnected. While this remains at a relatively infancy phase at this stage, success stories – such as Zenzeleni in the Eastern Cape – show that it is possible to improve access to the internet and other ICTs through community networks. The success of community networks requires, among other things, policy and regulatory assistance, allocation of spectrum and the lowering of financial and other barriers to enable the community networks to operate effectively.

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[152] For a map of mobile open wi-fi hotspots in South Africa, see Wiman, 'Where may I hook up to free wi-fi in South Africa?', 2019, accessible at https://www.wiman.me/south-africa.

[153] Accessible at https://projectisizwe.org/projects/.

[154] *Id.*

[155] *Id.*

[156] Accessible at https://www.goodthingsguy.com/south-afri-can-stories/cape-town-just-launched-free-wifi-heres-can-find-hotspots/.

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] Internet Society, 'Community networks', accessible at https://www.internetsociety.org/issues/community-networks/.

Role of the private sector

The private sector plays a key role in providing public wi-fi services. In this regard, the government entity will likely engage a private sector provider to roll out the wi-fi services, typically in exchange for payment or in terms of an incentivised scheme. However, caution needs to be exercised in ensuring that the proper procurement procedures have been followed, that there is an open and transparent process, and that there is accountability from both the public and private sector entities.

For example, in July 2019, the High Court of South Africa set aside a multi-billion rand broadband contract between the City of Tshwane and Altron Nexus for the procurement and installation of a fibre broadband network in 2016.[161] The review of this contract was based on irregularities and non-compliance with the procurement process.

The Constitutional Court of South Africa has made clear that in our constitutional structure, a private entity does not have to be part of government to be bound by the Constitution as a whole.[162] Private entities can also perform functions that are fundamentally public in nature. In this regard, the Constitutional Court has stated that:[163]

> "When Cash Paymaster concluded the contract for the rendering of public services, it too became accountable to the people of South Africa in relation to the public power it acquired and the public function it performs. This does not mean that its entire commercial operation suddenly becomes open to public scrutiny. But the commercial part dependent on, or derived from, the performance of public functions is subject to public scrutiny, both in its operational and financial aspects."

Key considerations for implementation

The following are among the key considerations for the implementation of this aspect of the seven-point plan:

- *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.
- *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.
- *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

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[161] IT Web, 'Altron Nexus loses multi-billion Tshwane broadband project', 17 July 2019, accessible at https://www.itweb.co.za/content/LPwQ5Mlyn1eqNgkj.
[162] Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others, [2014] ZACC 12, Constitutional Court of South Africa, 17 April 2014, paras 52-53.
[163] *Id.* at para 59.

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.

- *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.

- *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.[164] 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.

- *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.

4 // 7: PROVISION OF FREE BASIC INTERNET

Free basic municipal services

Basic municipal services are provided for in South Africa in terms of the Local Government: Municipal Systems Act 32 of 2000[165] (MSA). The term "basic municipal services" is defined in section 1 of the MSA as "a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger the public health or safety or the environment". Section 73(1)(c) of the MSA goes further to require that a municipality must ensure that all members of the local community have access to at least the minimum level of basic municipal services.

Section 73(2) of the MSA goes on to provide that municipal services must be equitable and accessible; be provided in a manner that is conducive to the prudent, economic, efficient and effective use of available resources, as well as the improvement of standards of quality over time; be financially sustainable; be environmentally sustainable; and be regularly reviewed with a view to upgrading, extension and improvement.

In practice, free basic municipal services are services that are provided at no charge by the government to indigent or lower-income households. At present in South Africa, these services are provided by municipalities and include a minimum amount of electricity, water and sanitation to cater for the basic needs of a poor household:[166]

- *Free basic water:* Free basic water consists of at least a basic amount of 6 kilolitres (the equivalent of 6 000 litres) of water per month per household. This amount may differ among different municipalities.

- *Free basic electricity:* Free basic electricity of 50kWh per household per month is provided. It is intended that this amount of electricity would be enough to provide basic lighting, basic water heating using a kettle, basic ironing and a small television or radio.

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[164] Wired, 'Simple steps to protect yourself on public wi-fi', 8 May 2018, accessible at https://www.wired.com/story/public-wifi-safety-tips//
[165] Accessible at https://www.gov.za/sites/default/files/gcis_document/201409/a32-000.pdf.
[166] South African Government, 'How do I access free basic municipal services?', accessible at https://www.gov.za/faq/government-services/how-do-i-access-free-basic-municipal-services.

- *Free basic sewerage and sanitation:* Sewerage and sanitation, as well as solid waste management, are subsidised up to R50 per month or at a 100% subsidy to indigent households.

Only indigent households qualify for free basic services. To determine this, municipalities subject all applications to means tests to determine whether households meet the criteria set by the municipality for indigent status.[167]

These subsidies are provided to members of the public in the realisation of the rights contained in the Constitution, in line with the provisions of the MSA. However, the MSA does not stipulate the services that constitute basic municipal services. There is therefore no bar in terms of the MSA that would prevent access to the internet being offered as a basic municipal service as well.

Tranche of free basic internet

An obvious parallel can be drawn between the basic municipal services that are currently offered, on the one hand, and access to the internet, on the other, which has become indispensable to the rights contained in the Constitution. Given that access to the internet is fundamental to the realisation of the full array of rights, those without access to the internet are deprived of such enjoyment. For indigent persons living in poverty, access to the internet remains largely out of their reach.

Public facilities, as described above, can go part of the way in assisting, but more needs to be done to ensure that they have the opportunity to fully enjoy the benefits that the internet can offer, including in respect of human progress and economic development. B-Connected, an initiative adopted in the Nelson Mandela Bay Municipality, may be considered as a relevant example.[168] In terms of the initiative, there are three tiers of free internet provision:

- *Free basic:* Persons who qualify for free basic water and electricity services from the municipality also receive free basic internet, in the amount of 250 megabytes per month.
- *Up-to-date municipal account:* Persons with a municipal account that is up-to-date receive a free data bundle, in the amount of 1 gigabyte per month.
- *Up-to-date account arrangement:* Persons who keep up-to-date in paying their municipal accounts as arranged with the accounts department receive a limited free data bundle, in the amount of 500 megabytes per month.

Persons who receive a data bundle in the stipulated amount can connect from any device that is wi-fi enabled. They can enjoy free access to the internet from anywhere, including in their homes, up to the stipulated amount, whereafter they are given the opportunity to purchase additional data at a reduced rate.[169] While the free data bundles expire at the end of each month, they are transferable and multiple devices can be connected on the same day.[170] The free data bundles are paid for by the Nelson Mandela Bay Municipality.[171]

Key considerations for implementation

The following are among the key considerations for the implementation of this aspect of the seven-point plan:

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[167] *Id.*
[168] An overview of B-Connected is accessible at http://www.nelsonmandelabay.gov.za/Council.aspx?pageID=244.
[169] *Id.*
[170] *Id.*
[171] *Id.*

- *Scope of the MSA:* The MSA does not stipulate any basic municipal service by name, but rather sets out the broad considerations to be taken into account by the relevant municipality. There can be no doubt that access to the internet is integral to providing an acceptable and reasonable quality of life.
- *Beneficiaries:* The MSA affords municipalities a discretion in determining categories of beneficiaries. As a starting point, it may be prudent to tailor the service offering to the most vulnerable and indigent members of the population, who qualify in terms of the means tests for other basic municipal services.
- *Delivery of service:* There are multiple different ways in which the service can be provided to the members of the public who qualify. For instance, a token may be provided monthly, or collection points be allocated to acquire the data. This would depend, in part, on the service provider, but should be duly cognisant of offering simple and quick access.
- *Provision of service:* As indicated, municipalities have a discretion in the provision of basic services. At a minimum, 1 gigabyte per month seems an appropriate allocation to enable communications, web browsing and other online activity. This allocation should be transferable, and it should be technically permissible for multiple devices to connect simultaneously.

5 // 7: DIGITAL LITERACY PROGRAMMES

Types of skills required

As noted by UNESCO, media and information literacy – a broad term that encompasses digital literacy – provides answers to the key questions that users of ICTs may ask themselves: how to access, search, critically assess, use and contribute content wisely, both online and offline; what the ethical issues are 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.[172]

It is widely recognised that digital skills – and digital literacy skills in particular – can improve social inclusion. In broad terms, the following categories of skills should be considered:[173]

- *Supply-side skills:* This would include addressing the skills shortage in the public and private sector to meet the specialised needs of knowledge production necessary for innovation, such as engineering and technical skills to design, build and operate networks, services and content; software developers, designers, writers, programmers and editors to produce and supply digital content; and dedicated sectoral training for job creation, such as call centre operations and management through a targeted youth development programme.
- *Demand-side skills:* This would include enabling national access and use of ICTs through instilling digital skills through the school curriculum programme; and developing a national digital literacy project aimed at those marginalised from ICT services.
- *Institutional capability:* This would include specialised policy and regulatory training and skills upgrades for staff in sector institutions. However, as noted in SA Connect, this is a particular challenge for individuals in institutions in this sector due to the dynamic nature of the sector and the requirement for high levels of technical expertise.
- *Media and information literacy skills:* As referred to above, while technical and related ICT skills are essential, it is also critical for all persons to have relevant media and information literacy skills to meaningfully access the internet. These skills are life skills that need to be rolled out as part of the school curricula, as well as more broadly to persons who have not been exposed to such skills through their schooling. Not only are these skills effective for enabling the public to exercise their rights effectively, they are also powerful in assisting the public to combat mis- and disinformation and to not fall prey to cybercrimes.

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[172] UNESCO, 'Media and information literacy', accessible at https://en.unesco.org/themes/media-and-information-literacy.
[173] *Id.* at p 46.

Put differently, digital skills can also broadly be divided into the following categories: reading, including how to explore the web through search and navigation; writing, including how to build the web through design, composition and code; and participating, including how to connect, share and collaborate online.[174] As noted by the WEF, the top priorities should be to help people acquire the skills to go online and spread awareness of the internet's value.[175]

Responsibility for digital literacy

In the ICT White Paper, the government recognises that it bears the onus to empower users to protect themselves.[176]   In this regard, the ICT White Paper commits the government to lead and coordinate awareness campaigns on security mechanisms and tools that users can utilise to protect themselves online.[177]   Further to this, it was correctly noted in SA Connect that:[178]

> "There is now considerable evidence to demonstrate that inequality of access and use of ICTs and therefore the ability to deploy their full potential – is rooted in the unequal capabilities of individuals and groups, such as the poor, particularly women, those living in rural areas, persons with disabilities, and the elderly.
>
> As ICTs become more complex, the ability to optimise their use correlates strongly with education and income. Those marginalised from education and therefore from employment and income are most likely to be marginalised from access to the type of communications services required to participate meaningfully in a modern economy and society. Therefore, strategies for inclusion in the information society and knowledge economy need to be central to national human development strategies. this needs to become a national priority and a core election of the national project of digital inclusion."

Digital literacy interventions

// Examples of Digital Literacy Interventions

- *Media Monitoring Africa:* MMA, together with other partners including the DCDT, Google and Facebook, run an initiative called Web Rangers. This is an international digital and media literacy programme designed to empower young people with critical skills on how to use the internet and social media responsibly and confidently. The programme was launched in South Africa in 2016, with the stated aim of improving young people's digital literacy skills and to empower to take ownership of their digital footprints. The initiative is child-led, and currently operates in three provinces.[179]
- *African Centre of Excellence of Information Ethics:* Between 2015-2017, digital awareness workshops were conducted as part of the National Health Initiative pilot study. This initiative was undertaken in collaboration with relevant government departments, and was based on the following pillars: human capital development; local digital content development; innovation and digital entrepreneurship; ICT applications; e-government; research and development; e-awareness and inclusion.[180]

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[174] *Id.*
[175] WEF, above n 5, p 18.
[176] ICT White Paper, above n 6, p 124.
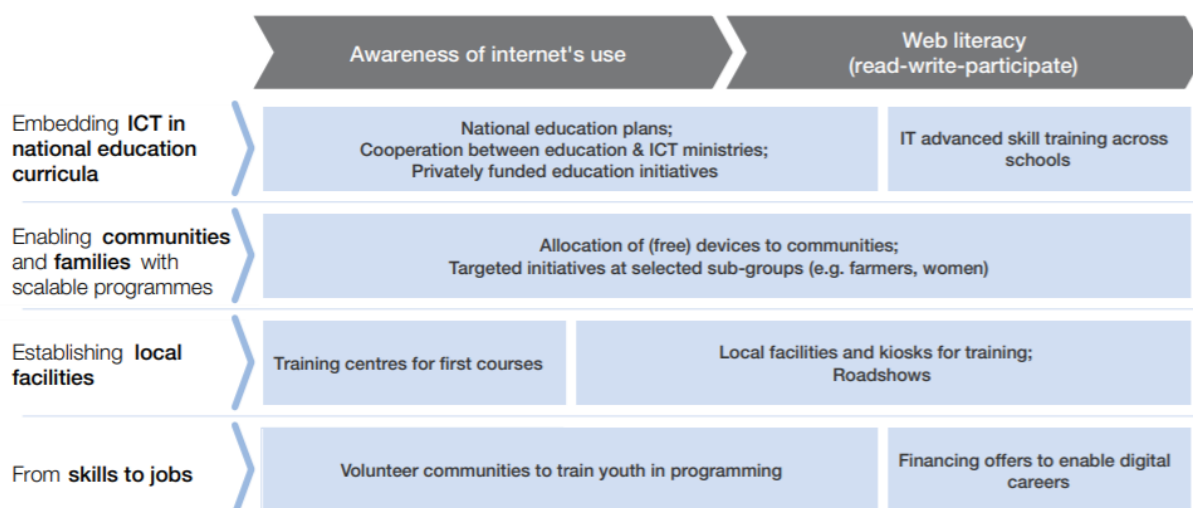[177] *Id.*
[178] SA Connect, above n 33, p 24.
[179] Further information is accessible at https://mediamonitoringafrica.org/2019/05/28/web-rangers-protecting-children-online/.
[180] Further information is accessible at https://www.up.ac.za/african-centre-of-excellence-for-information-ethics/article/2087675/workshops.

As noted by the ICT White Paper, access without literacy will not address the digital divide.[181] With the evolution of technology, awareness and ability are now key factors that affect access. Interventions will thus need to be made to increase digital literacy, particularly by potential users of broadband in rural and low-income communities.[182] The ICT White Paper therefore calls for a digital literacy training and skills development component to be promoted to ensure that a lack of digital literacy and awareness does not become a barrier to the uptake and usage of broadband in communities.[183]

WEF proposes the following model for spreading skills and awareness:[184]

	Awareness of internet's use	Web literacy (read-write-participate)
Embedding **ICT** in national education curricula	National education plans; Cooperation between education & ICT ministries; Privately funded education initiatives	IT advanced skill training across schools
Enabling **communities** and **families** with scalable programmes	Allocation of (free) devices to communities; Targeted initiatives at selected sub-groups (e.g. farmers, women)	
Establishing **local** facilities	Training centres for first courses	Local facilities and kiosks for training; Roadshows
From **skills to jobs**	Volunteer communities to train youth in programming	Financing offers to enable digital careers

The next step is to move from skills to jobs. This is recognised, for instance, by the International Labour Organisation (ILO) and the ITU, who have launched the ILO-ITU Digital Skills for Jobs Campaign to equip five million youth with job-ready digital skills.[185] The reality is that most jobs today require some level of digital skills. The campaign is premised on the understanding that investing in developing appropriate digital skills is a win-win strategy: it addresses the skills gap by increasing employability, creating quality jobs, and sparking innovation across all sectors in the digital economy.[186] The campaign calls for the following commitments:

While these meet much of the necessary skills that might allow for more effective economic access, it is equally important that digital literacy skills are covered more broadly, to allow, encourage and facilitate effective exercise of democratic rights by the public, and marginalised groups in particular, children, older people, people with disabilities, women the poor.

- *Demand-driven digital skills curricula:* Introduce demand-driven digital skills curricula in education, apprenticeships and other youth skills development programmes.
- *Quality of teaching and training:* Boost quality of teaching and training of digital skills.
- *Fostering job placement:* Build links between digital skills training providers and employers to foster job placement.
- *Digital skills development programmes:* Deliver or fund digital skills development programmes for youth, including programmes targeting young women.

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[181] ICT White Paper, above n 6, p 36.
[182] *Id.*
[183] *Id.*
[184] WEF, above n 5.
[185] Accessible at https://www.itu.int/en/ITU-D/Digital-Inclusion/Youth-and-Children/Pages/Digital-Skills.aspx.
[186] *Id.*

- *Entrepreneurship:* Equip young entrepreneurs in the digital economy with digital skills to start and grow their businesses.
- *Job creation:* Create jobs for young people with digital skills.
- *Campaigns:* Organise or participate in global, regional or local campaigns to spark youth's interest in digital skills.

The need for relevant content

As a side note, there is a further consideration in this regard relating to the question of the demand-side end of the relationship between the user, the content and the service provider. While providing access to infrastructure is important, this is not in itself enough. In this regard, the question of access must include broader considerations and measures in respect of capacity-building at various levels; local content creation; intermediary skills and services; media and information literacy skills; institutional capacity to understand what people need; and to ensure that these needs are met in a way that is meaningful, useful and accessible.

In making universal access a reality in South Africa, strategies aimed at addressing the supply-side must not ignore the demand-side as well. This includes, for instance, developing digital literacy skills, fostering relevant capabilities, and ensuring the provision of appropriate, relevant and meaningful content for users. In doing so, this not only has the potential to meaningfully realising existing demand, but also to unleash 'untapped' demand. Without stimulating the demand-side, efforts at expanding the supply-side will fail to achieve the desired impact to the extent intended. This needs to be encapsulated both in the broadband value chain and the broadband policy framework.

Central to the question of demand is to ensure that there is an investment in digital content, as well as in the applications that allow for such content to be accessed. This should include local content in local languages, on subject-matter that is pertinent to local communities. As identified in SA Connect, the development or generation of content should be developed through, for instance: (i) encouraging the production, supply and use of public sector information and content; this includes promoting the digitisation and distribution of public sector information and improving access to public sector content; (ii) promoting demand for local digital content through increasing public sector efficiency and facilitating public demand aggregation, particularly in rural and remote areas; (iii) enhancing access to local content, diversity of content supply and use; (iv) encouraging the development of e-skills in primary, secondary and tertiary education; and (v) promoting research and development in ICT applications, content and services locally.[187]

Key considerations for implementation

The following are among the key considerations for the implementation of this aspect of the seven-point plan:

- *Types of skills required:* It is crucial to assess the types of skills needed in the community being served. For instance, some communities may require basic computer literacy skills, while others may benefit from more advanced skills provision. Most communities will likely have a range within the community, and a determination will need to be made regarding which skill sets should be prioritised and are most beneficial. Particular consideration should be had for vulnerable and marginalised groups, including women, children, the elderly and persons with disabilities.
- *Delivery of skills provision:* An assessment will also need to be made regarding the delivery of skills provision. This might depend on the availability of schools and other educational facilities in the community that offer appropriate skills development courses. Further, regard should be had to offering digital skills training at government facilities that offer public access, as this can be a useful and cost-

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[187] SA Connect, above n 33, p 48.

effective way to deliver relevant trainings. Additionally, it may be prudent to offer train-the-trainer courses within communities, so that members of the community can go on to offer those trainings to others.

- *Utility and relevance:* Users should have a clear understanding of why digital literacy programmes are necessary. In this regard, a clear link should be drawn between meaningful access to the internet as an enabler of fundamental rights and services, including job creation, economic development, political participation, online safety and protection, and personal growth. Moving from skills to jobs is one way of achieving this; another is to ensure that users are directed towards relevant content, so that they can maximise the benefits that the internet can offer.

6 // 7: MINIMUM PROTECTIONS IN THE PROVISION OF FREE ACCESS

Minimum protections for the user

Persons making use of measures or initiatives to enable free access to online services must not be prejudiced in the enjoyment of their other rights. There is a risk that through these mechanisms, a range of improper conduct may be fostered that runs foul of acceptable standards, such as data harvesting, the tracking of user-behaviour, and monitoring, and so on. As such, minimum safeguards should be established and implemented, that may include the following:

- *Compliance with the right to privacy and data protection frameworks:* Providers of free access to online information should guard against using it as an opportunity to exploit the privacy rights of users. The collection, retention and further sharing of personal information should be in line with data protection laws and best practices. The services provided should also be subject to adequate standards of digital security that protect users online.
- *Minimal collection and retention:* To the extent that personal information is collected, this should be minimal and not excessive. Sensitive personal information should never be collected. Further, the information should not be retained for longer than is strictly necessary for the purpose for which it was collected, and should be appropriately destroyed thereafter.
- *Consent:* To the extent that users of the free service are, for instance, asked to consent to providing their personal information, the consent obtained must be appropriate and lawful. For consent to be valid, it must be voluntary, specific and informed. This should include some proactive measure on the part of the user; silence, pre-ticked boxes or inactivity should not be seen as constituting valid consent.[188] The user should also be able to withdraw that consent at any stage.
- *Adequacy, appropriateness and quality of the service provided:* The technical quality of the service provided, including the speed of the service, should be appropriate to meet the needs of the users, and should not unduly impinge on their ability to fully enjoy the potential of access to the internet. Furthermore, subject to considerations of reasonable network management, the provider should avoid to the extent possible imposing regulatory restrictions on access or measures that impede neutrality online, such as through censorship of content, or the blocking, filtering or throttling of the service.

Minimum protections for the network

States need to put in place measures that address cybercrimes in a rights-based and accountable manner. There is broad agreement among researchers that current e-government systems are susceptible to cyber threats.[189] In ensuring a secure system, the following should be considered:[190]

- *Legal framework:* Legal measures allow governments and other stakeholders to define what are considered to be cyberattacks, and the responses thereto. A legal framework sets the minimum

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[188] Recital 32 to the General Data Protection Regulation of the European Union.
[189] UN, above n 126, p 68.
[190] *Id.* at pp 71-79.

standards of behaviour, harmonise practices and offer a setting for interoperable measures that facilitate international measures against cybercrimes.[191] In South Africa, the Cybercrimes Bill is currently before Parliament,[192] having already undergone an extensive public consultation process.[193] At the date of publication, the Cybercrimes Bill had been yet to be signed into law.

- *Organisational framework:* Service providers responsible for the implementation of the seven-point plan to have a robust cybersecurity strategy to secure their systems and the users making use of such systems. Relevant stakeholders should be engaged to ensure trust and transparency in the cybersecurity strategy. Service providers should ensure appropriate organisational measures to address cyber threats, and track incidents – including attempts – of cyberattacks.

- *Technical framework:* Service providers should establish strong security features within their networks and systems to increase resilience against cyberattacks. This might include, for example, antivirus software and antimalware. Regular audits should be performed to ensure proper functionality and system security. If there is a cyberattack, affected users should be notified, particularly if their personal data has been affected by this.

- *Capacity building and cooperation:* With the increasing interest in knowledge sharing and transfers, cooperation through collaboration and communication among relevant stakeholders are crucial.[194] The internet is a highly interdependent system, and as such a secure system requires collaboration among all stakeholders, including vendors, industries, manufacturers, academia, government and civil society.

Key considerations for implementation

The following are among the key considerations for the implementation of this aspect of the seven-point plan:

- *Relevant frameworks:* Appropriate frameworks – including legal, technical and organisational frameworks – need to be developed to ensure that this aspect of the seven-point plan is implemented in a lawful and rights-based manner. Linked to this, it is imperative that there is an effective and accountable data protection framework in place that ensures the principles for the lawful processing of personal information are upheld, and that data exploitation does not arise.

- *Consent of the user:* In circumstances where users are requested to provide certain consent, this must be informed, voluntary and freely given. Users are entitled to have to express their consent through a positive action, and it should not be placed in an invidious position of inadvertently consenting to the collection and use of their personal information. Added to this, users should not be deprived of the ability to exercise their rights if they are unwilling to consent to the infringement of their right to privacy.

- *Service provided:* The service provided should be adequate, appropriate and of quality. In this regard, standards should be set to ensure that users have meaningful and effective access to the internet and other ICTs.

- *Interdependence:* Appropriate multi-stakeholder fora should be established for the engagement and coordination among the different role-players. Such fora should provide for public engagement, including by civil society actors, to exercise a measure of oversight and accountability, and ensure that the measures put in place in respect of interdependence are done in a rights-based manner.

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[191] *Id.* at p 72.

[192] A copy of the Cybercrimes is accessible at https://pmg.org.za/bill/684/.

[193] Karabo Rajuili, 'Has the four-year evolution of South Africa's Cybercrimes Bill delivered the internet we want?', 4 December 2018, accessible at https://afrisig.org/2018/12/04/has-the-four-year-evolution-of-south-africas-cybercrimes-bill-delivered-the-internet-we-want/.

[194] UN, above n 126, p 80.

7 // 7: OVERSIGHT AND MONITORING OF THE PROGRESSIVE REALISATION OF FREE ACCESS

Commitments related to access to the internet

South Africa has committed to a number of regional and international instruments that apply to the exercise of rights online, and consequently access to online information. These instruments require the state to report periodically on its compliance with its obligations under these instruments, and for the South African Human Rights Commission to file an independent parallel report regarding the state's performance.

Some of the key rights on which access to the internet have a bearing include the following:

- *African Charter on Human and Peoples' Rights:* The right to equality (article 2); the right to dignity (article 5); the right to freedom of conscience and religion (article 8); the right to freedom of expression and access to information (article 9); the right to freedom of association (article 10); the right to freedom of assembly (article 11); the right to participate in government (article 13); the right to work (article 15); the right to health (article 16); the right to education (article 17); the right to development (article 22); the right to a general satisfactory environment favourable to development (article 24).
- *International Covenant on Civil and Political Rights:* The right to equality (articles 2 and 3); the right to dignity (article 10); the right to privacy (article 17); the right to freedom of thought, conscience and religion (article 18); the right to freedom of expression and access to information (article 19); the right to peaceful assembly (article 21); the right to freedom of association (article 22); the right to participate in public affairs (article 25).
- *International Covenant on Economic, Social and Cultural Rights:* The right to equality (article 3); the right to work (article 6); the right to an adequate standard of living (article 11); the right to health (article 12); the right to education (article 13); the right to enjoy the benefits of scientific progress and its application (article 15).
- *Convention on the Rights of Persons with Disabilities:* The right to equality (article 5); the right to freedom of expression, opinion and access to information (article 21); the right to privacy (article 22); the right to education (article 24); the right to health (article 25); the right to work and employment (article 27); the right to participation in political and public life (article 29).

Given the bearing that access to the internet has on the realisation of these rights, the government, the South African Human Rights Commission and civil society should ensure that access to the internet forms a component of the 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.

Developing an oversight and monitoring framework

Notably, in 2018, South Africa accepted the following recommendation from the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in terms of its commitments under the International Covenant on Economic, Social and Cultural Rights:[195]

> "**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).

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[195] CESCR, 'Concluding report on the initial observations on South Africa', E/C.12/ZAF/CO/1, 12 October 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."

In presenting the reports on access to the internet, all stakeholders should consider the ambit of the right, the intervention being considered, the intended outcomes and the indicators used in the assessment. In respect of universal access to the internet, this might include the following: access, price and quality of broadband; targets met; network reach; cost to communicate; speed, quality and cost of network capacity; speed of rollout; increased investment by network operators; improved penetration; and demand stimulation and uptake.

// ROAMX Principles[196]

UNESCO has developed a framework for monitoring internet universality in a country. This framework seeks to identify features of the internet that are fundamental to fulfilling the potential that it has to create and build knowledge societies, as well as to achieve sustainable development. The framework draws on various contextual factors and facets of the internet ecosystem, and is built on the following principles:

- **R:** the internet must be based on human **r**ights.
- **O:** the internet must be **o**pen.
- **A:** the internet must be **a**ccessible to all.
- **M:** a **m**ulti-stakeholder approach should be adopted.
- **X:** **cross**-cutting and contextual considerations should be considered.

Within each of the categories of the ROAMX Principles, the framework sets out certain themes that are relevant:

- **Category R (Rights):** policy, legal and regulatory framework; freedom of expression; right of access to information; freedom of association and the right to take part in the conduct of public affairs.
- **Category O (Openness):** policy, legal and regulatory framework; open standards; open markets; open content; open data and open government.
- **Category A (Accessibility to all):** policy, legal and regulatory framework; connectivity and usage; affordability; equitable access; local content and local language; capabilities and competencies.
- **Category M (Multi-stakeholder participation):** policy, legal and regulatory framework; national internet governance; international and regional internet governance.
- **Category X (Cross-cutting indicators):** gender; children; sustainable development; trust and security; legal and ethical aspects of the internet.

In terms of implementation, the following action steps are suggested:

- **Step 1:** Establish a multi-stakeholder advisory board.
- **Step 2:** Build a research team.
- **Step 3:** Develop a project action plan.
- **Step 4:** Gather data and sources.
- **Step 5:** Analyse the data.
- **Step 6:** Report-writing and analysis.
- **Step 7:** Organise a national validation multi-stakeholder workshop.

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[196] UNESCO, 'Internet universality indicators: A framework for assessing internet development', 2019, accessible at https://en.unesco.org/news/unesco-publishes-internet-universality-roam-x-indicators-framework-assessing-internet.

Key considerations for implementation

The following are among the key considerations for the implementation of this aspect of the seven-point plan:

- _Assessment of implicated rights:_ All relevant rights which are implicated by access to the internet and ICTs should be clearly noted, and a common understanding be developed of the extent to which the internet impacts such rights. All relevant stakeholders, including the government, the South African Human Rights Commission and civil society, need to ensure that their reports to the treaty-bodies include appropriate references to access to the internet.
- _Development of targets and monitoring framework:_ The government, the South African Human Rights Commission and civil society should strive to establish a common framework for the monitoring of access to the internet, particularly universal free access. This will serve to streamline the reporting process, and ensure clarity and consistency in the information being provided.
- _Engagement in state-reporting processes:_ All relevant parties should be encouraged to actively participate in all stated of the treaty-body reporting processes, including through convening local stakeholder meetings to ensure that different views are heard.
- _Tracking of recommendations and follow-up:_ Following recommendations being provided by the treaty-body, this should be recorded and tracked consistently, to ensure that the recommendations are meaningfully implemented.

// PART IV: IMPLEMENTING THE SEVEN-POINT PLAN

"The internet is at a crossroads. Growing acknowledgement of the challenges and risks highlights the need for more targeted policy and regulation, as well as new business approaches and industry initiatives aimed at curbing unintended effects and/or negative outcomes of internet adoption.

And yet in many respects the benefits of internet connectivity have never been greater. Broadband connectivity does not merely transform individual human potential, it also underpins national efforts to develop knowledge economies, foster digital transformation in government services and digital transition across economic sectors, expand opportunities for enterprises, and provide greater value for citizens and consumers."

- Broadband Commission for Sustainable Development[197]

WHERE TO NEXT?

While each aspect of the seven-point plan has been dealt with in turn, together with key considerations for implementing each one separately, the seven-point plan is ideally intended to provide a holistic solution to realising universal and free access to online information in South Africa. As such, the different aspects of the seven-point plan should not be considered in isolation; rather, they should be considered as components of a holistic plan that are mutually supportive and reinforcing.

In implementing the seven-point plan, the following overarching considerations should be taken into account:

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[197] Broadband Commission for Sustainable Development, 'The state of broadband as a foundation for sustainable development', September 2019, accessible at https://www.itu.int/dms_pub/itu-s/opb/pol/S-POL-BROADBAND.20-2019-PDF-E.pdf.

- *The need for a public interest and rights-based approach:* All approaches to achieving universal free access to online information must be informed by the public interest, and approached through a rights-based lens, with the respect, protection and promotion of fundamental rights at the core. The priority through the implementation of the seven-point plan should, fundamentally, be the realisation of rights under South Africa's constitutional and international human rights commitments.

- *Coordination among relevant stakeholders:* There is, first and foremost, a need for coordination among relevant government entities if universal free access to online information is to be achieved. The current disparate and uncoordinated approach is inimical to realising this outcome. Further to this, there should be better coordination among different stakeholders, including the government, private sector and civil society, to ensure that the different initiatives being undertaken to realise universal free access to online information are indeed complimentary.

- *Appropriate regulatory and policy framework:* To achieve the overall outcome of the initiatives set out in this report, these should be developed into a clear, inclusive and coherent regulatory framework.

- *Prioritisation of vulnerable and marginalised groups:* The ICT White Paper identifies certain categories of persons who are deserving of particular support and initiatives that promote access, particularly persons with disabilities and persons with limited or no income.[198] In respect of the latter category, the ICT White Paper notes that "[p]eople with limited or no income require targeted interventions to make ICTs affordable for them. Where regulatory interventions and competition fail to bring prices down sufficiently to meet the needs of those with limited or no income, the government will intervene and provide end user subsidies".[199]

- *Addressing socio-economic divides:* The ICT White Paper highlights the need to ensure that new digital divides do not emerge as new technologies and services become available.[200] As such, increasing coverage to rural, remote and underserviced areas needs to be a priority, notwithstanding the increased costs and lower returns that may arise in providing such services.[201] As noted in the ICT White Paper: "Often, access to and affordability of the devices necessary to use these services is also a challenge in these areas, and digital astuteness, skills and awareness of the benefits of services affected."[202]

- *Coverage:* Limited coverage and slower internet speeds are more prominent in rural and peri-urban areas. Challenges relating to access are also closely aligned with broader social issues, such as poverty, education, digital literacy and buying power.[203]

- *Oversight:* Governments have played a big role in improving and extending access through policy setting and infrastructure initiatives.[204] In general, governments can encourage investment when there is a clear long-term plan for the economy and a transparent regulatory framework.[205] Research undertaken by the ITU shows a positive correlation between ICT regulation and policy, and the growth of markets for digital services.[206]

- *Public-private partnerships:* The reference to "free" access relates to access being free for the user, with the costs associated with this being carried by other role-players. This may, for instance, be funded by the state or by a telecommunications operator as part of a licensing condition. To make provision for this, there needs to be effective public-private partnerships that recognise the different roles played by different stakeholders, and which further incentivises this provisioning in an appropriate and effective manner.

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[198] ICT White Paper, above n 6, p 3.
[199] *Id.*
[200] *Id.* at p 34.
[201] *Id.*
[202] *Id.*
[203] SA Connect, above n 33, pp 13-14.
[204] WEF, above n 5, p 12.
[205] *Id.*
[206] ITU, 'The economic contribution of broadband, digitisation and ICT regulation', 2018, p 23, accessible at https://www.itu.int/en/ITU-D/Regulatory-Market/Documents/FINAL_1d_18-00513_Broadband-and-Digital-Transformation-E.pdf.

CHECKLIST FOR IMPLEMENTATION

In order to implement the seven-point plan, it is proposed that the following checklist be adopted – and modified, as necessary, by the relevant stakeholders, to ensure the effective and holistic implementation of the various aspects in a rights-based manner.

// Checklist for Implementation of the Seven-Point Plan

Intervention	Factors for implementation
Free public access at government sites	• Creation of an enabling environment. • Setting of clear targets, including in terms of updating SA Connect. • Identification of priorities, such as remote areas. • Awareness-raising amongst the broader community. • Allocation of appropriate resources. • Provision of appropriate devices and connectivity. • Safeguarding of physical and digital security of devices, networks and other ICTs. • Trained personnel to assist the broader community. • Training and development to be made available to the broader community.
Zero-rated access to government websites and data	• Setting of clear targets, including in terms of the e-Government Strategy and the OGP. • Identification of categories of government-held information to be proactively disclosed. • Establishment of arrangements with relevant service providers to zero-rate access to government websites and data. • Establishment of principles relating to zero-rated access to government websites and data, including the principle of fair access and the criteria for the selection of websites. • Engagement in public consultation with relevant stakeholders. • Strengthening of citizen-based monitoring to enhance accountability and performance.
Free public wi-fi	• Setting of clear targets and prioritisation of the user base and number of hotspots needed. • Determination and ongoing testing of the consistency and standard of service provision. • Establishment of zero-rated content portals and access to government websites. • Establishment of appropriate safeguards for data protection and data security. • Determination of appropriate service providers and public-private agreements through open procurement processes and safeguards for corporate accountability.
Free basic municipal services	• Creation of an enabling environment for internet access as a free basic municipal service. • Determination of the appropriate beneficiaries and the process for the delivery of the service. • Establishment of a plan for the progressive realisation of the delivery of the service more broadly. • Engagement with relevant municipalities and other stakeholders to determine the appropriate prioritisation. • Determination of the appropriate allocation of the service.
Digital literacy programmes	• Assessment of the types of skills required. • Assessment and implementation of the appropriate delivery of the skills required. • Establishment of appropriate digital literacy programmes that are relevant and useful for the user base.

	• Awareness raising of the importance of digital literacy skills for the exercise of rights and participation in the digital economy.
Minimum protections in the provision of free access	• Establishment of appropriate frameworks – including legal, technical and organisational frameworks – to ensure that this is safeguarded in a lawful and rights-based manner. • Obtaining informed consent from the user that is voluntary and freely given. • Implementing measures to ensure that the service provided is adequate, appropriate and of quality, and reviewing such measures on an ongoing basis. • Engagement and coordination through multi-stakeholder fora to implement measures in respect of interdependence.
Oversight and monitoring of the progressive realisation of universal access	• Assessment of implicated rights. • Engagement with relevant stakeholders, including the South African Human Rights Commission and relevant treaty-body mechanisms. • Development of targets and monitoring framework. • Engagement in state-reporting processes. • Tracking of recommendations and follow-up.

// ABOUT THE PARTNER ORGANISATIONS

MEDIA MONITORING AFRICA (MMA)

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 20 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.

SOUTH AFRICAN NATIONAL EDITORS' FORUM (SANEF)

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.

INTERACTIVE ADVERTISING BUREAU OF SOUTH AFRICA (IABSA)

The 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.

## ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)

The APC is an international network of organizations that was founded in 1990 to provide communication infrastructure, including Internet-based applications, to groups and individuals who work for peace, human rights, protection of the environment, and sustainability.

For more about APC, please visit: https://www.apc.org/.

ALT ADVISORY

ALT Advisory is a legal consultancy, based in Johannesburg, which offers advisory, analysis, research, training and tech innovation services in the following practice areas: (i) public law; (ii) information rights; (iii) data privacy; (iv) emergent technology; and (v) social innovation. ALT Advisory strives, in all instances, to act in the public interest, and has the protection and promotion of fundamental rights – domestically, regionally and internationally – as its overarching aim.

For more about ALT Advisory, please visit: https://altadvisory.africa.
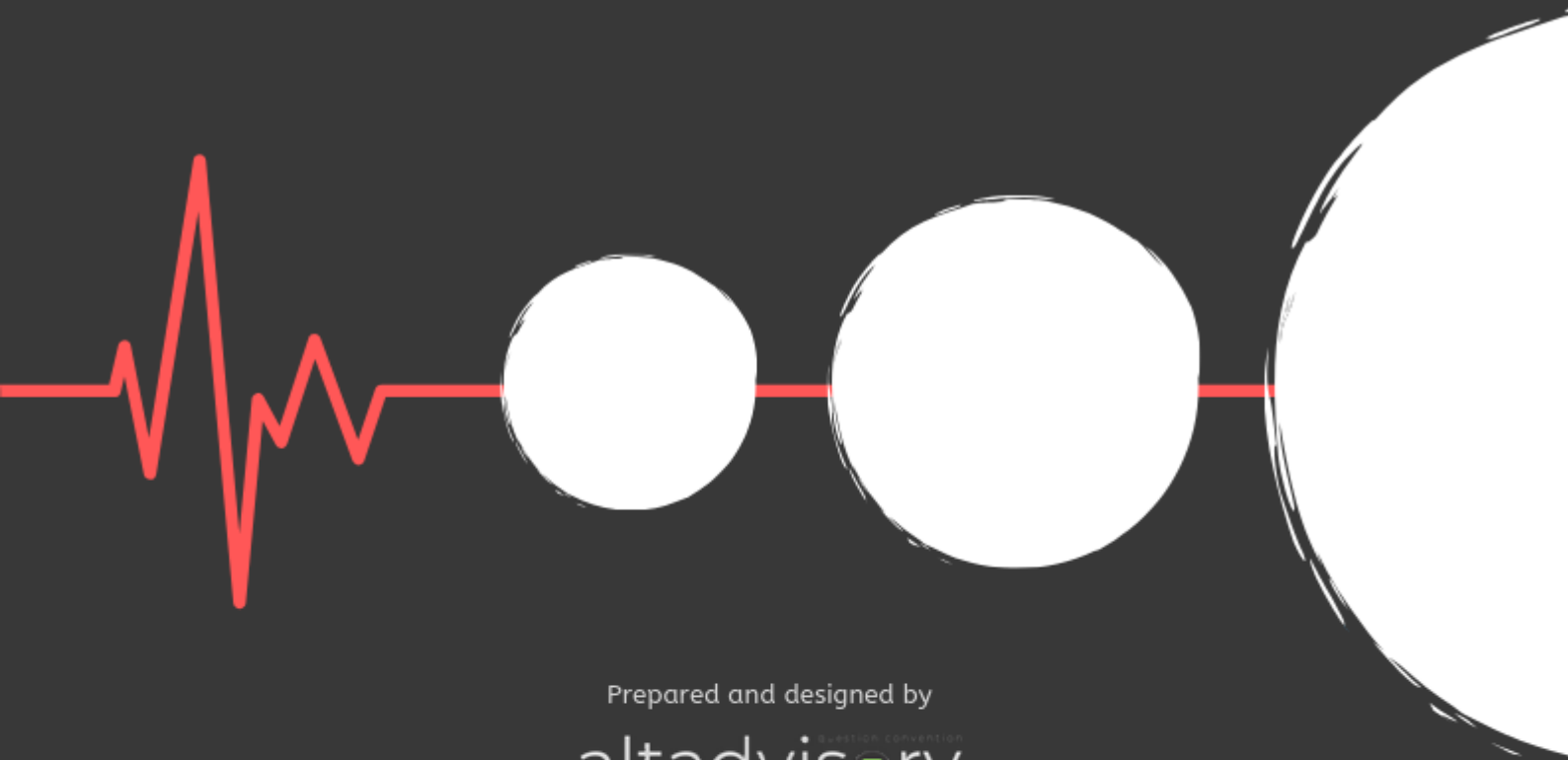
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