

**SUBMISSION TO THE SOUTH AFRICAN
HUMAN RIGHTS COMMISSION**

DATA CENTRES AND HUMAN RIGHTS IN SOUTH AFRICA

In response to the Commission's call for public submissions
on data centres and human rights in South Africa



**SUBMITTED JOINTLY BY HOUSING ASSEMBLY,
FOXGLOVE, OPEN SECRETS, RESEARCH +
ACTION AND PLANETARY AI COLLECTIVE**



with legal analysis and advice provided by the
Legal Resources Centre and Open Secrets



EXECUTIVE SUMMARY

South Africa is experiencing the fastest data centre expansion on the continent: more than 60 known facilities, a disclosed capacity of roughly 500 MW, and a hyperscale pipeline that would more than triple that figure. These facilities consume vast quantities of water, electricity and land – the very resources on which South Africans’ constitutional rights to water, a healthy environment, housing and dignity depend. Yet the expansion is proceeding in an information vacuum: developers withhold facility-level water and electricity figures as commercially confidential, public authorities approve applications without them, and no sphere of government holds a complete picture of the sector’s cumulative footprint.

The Cape Town experience illustrates the problem. In April 2026, Housing Assembly and Foxglove, represented by the Legal Resources Centre, objected to Equinix’s proposed hyperscale development at King Air Industria – across the road from communities in Gugulethu – because the application disclosed neither its water nor its electricity requirements. The Municipal Planning Tribunal approved it anyway.¹

This submission makes **four central recommendations** to the Commission:

- **first**, that the Commission recommend the establishment of a participatory national inquiry into the need, scale and impacts of data centre development in South Africa, as a necessary precursor to the development of a national regulatory framework. The inquiry should assess the scale of existing and proposed data centre development, weigh the social, economic and environmental costs and benefits, and evaluate these against the constitutional rights and socio-economic needs of South African communities. On the basis of the inquiry’s findings, a national regulatory framework for data centres should be developed that is rooted in constitutional rights and protections and built on principles of radical transparency, and that includes: mandatory per-facility disclosure of water and electricity consumption; a publicly accessible national data centre registry; binding community-benefit obligations modelled on those already required of the mining and renewable-energy sectors; and human rights due diligence consistent with the UN Guiding Principles on Business and Human Rights;
- **second**, that the Commission conduct or commission an independent assessment of the human rights, ecological and economic impacts of data centre development in South Africa, to establish a factual baseline that is currently missing;
- **third**, that the Commission recommend that government openly consider a moratorium (temporary pause) on the approval of new hyperscale data centres and of expansions of current data centres, until that national inquiry, regulatory framework and baseline are in place, as other jurisdictions have done; and
- **fourth**, that the Commission recommend the establishment of an independent panel on data centres that monitors and regularly assesses them across a range of measures (e.g. water use, electricity, land use) and compliance with various laws and policies (e.g. the National Environmental Management Act (NEMA), the Spatial Planning and Land Use Management Act (SPLUMA) and the Constitution). If a firm/developer/operator is found to be flouting the rules, they will face strict financial penalties and criminal prosecution.

This submission is not opposed to digital infrastructure or to investment, both of which South Africa needs. It asks only that development proceed on terms that are transparent, measured and genuinely beneficial to the communities that host it and do not jeopardise communities' constitutionally protected rights. Where development would come at the price of the water, electricity and land that people need to realise their basic rights, the Constitution requires that those costs be disclosed, weighed and mitigated before, not after, decisions are taken. Where the development threatens communities' constitutionally protected rights, then the development should not proceed.



A view of the Atlantic Hills Data Centre with the newly built roads that service the area.

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INTRODUCTION AND THE PARTIES

1. This submission is made jointly by Housing Assembly², a membership-based social movement in the Western Cape advocating for decent housing, basic services and spatial justice for people living in informal settlements and inadequate housing; Foxglove³, a non-profit working to make technology fair, which brought the first legal challenge to a hyperscale data centre in the United Kingdom and has run an active research and legal programme on South Africa's data centre sector since early 2025;⁴ Open Secrets⁵, a Cape Town-based non-profit investigating economic crimes and related human rights violations, including through its Digital Profiteers and Climate Profiteers programmes; Research + Action⁶, a non-profit supporting climate justice movements with research, education and investigative infrastructure; and Planetary AI Collective⁷, an international research collective hosted at the University of Edinburgh examining the socio-ecological impacts of artificial intelligence systems, including in South Africa. The Legal Resources Centre (LRC), the public interest law firm founded in 1979, has provided legal analysis and advice.
2. This submission responds to the Commission's call for public submissions on data centres and human rights in South Africa and provides collective comment on each of the themes outlined in that call. Our comments are rooted in the law and in South Africans' rights – rights which must be protected and respected by all those involved in the development and operation of data centres.
3. Our argument has two parts. First, the international experience of hyperscale data centre development gives us good reason to expect that South Africa's rapid expansion will place many of the rights in the Bill of Rights under strain or at risk – among them the rights of access to sufficient water, to a healthy environment, to housing and land, to just administrative action and, ultimately, to dignity. Second, and more immediately, our ability to establish whether those harms are occurring or being prevented is foreclosed by a prior failure: a near-total lack of transparency from data centre developers and public authorities alike. That failure does more than obscure the risks; it deepens the disquiet of affected communities, who are asked to accept developments of profound resource and rights significance without the basic facts. It is this combination – a well-founded expectation of harm and an information vacuum that prevents its assessment – that our four asks address.



Dry shrubbery masks the substation that sits on the boundary line of the Burgundy suburbs and feeds the Teraco complex in Cape Town.

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BACKGROUND: THE EXPANSION AND THE INFORMATION VACUUM

4. Data centres are the physical backbone of the AI-driven world economy, providing the computational power, storage and networking on which AI systems and everyday digital services depend. Such is their importance that the UK government has placed them on an equal footing with water, energy and emergency services as critical national infrastructure.⁸
5. Africa currently hosts around 1% of installed global data centre capacity, but this is changing rapidly: demand across the continent is expected to grow by 1.5–2 GW by 2030, and much of that growth will take place in South Africa – already the continent’s largest data centre market.⁹ Hyperscale facilities planned in Gauteng, the Western Cape and KwaZulu-Natal would add approximately 1.2 GW of information technology (IT) power capacity – more than tripling existing capacity.¹⁰
6. These developments are presented by companies (Google, Amazon, Microsoft), government officials, consulting firms and international organisations as essential to economic development and data sovereignty. However, those claimed benefits must be scrutinised. There are serious concerns that the claimed benefits will not be enjoyed by people in South Africa, who will nonetheless bear the costs – many while already facing dire resource constraints and deep inequality. One planned hyperscale facility in Durban will consume 400 MW of electricity – a quarter of the city’s total demand – in a country where power shortages have plagued ordinary citizens and small businesses alike.¹¹
7. Data centre operations are extractive in character: they consume vast quantities of water and electricity, and the sector under-reports both. Globally, data centres consume approximately 560 billion litres of water per year, projected to rise to around 1.2 trillion litres by 2030, enough for domestic water supply for a year to a third of the population in South Africa.¹²
8. It has been a growing argument of developers that data centres are akin to golf courses in their consumption of water, and for that reason data centre development is not objectionable and ultimately, *fair*. This ‘presumption of fairness’ argument is not defensible in South Africa. For South Africans, at every level of government, the land use needs to be assessed under the constitutional principles and rights – a legal framework that proceeded the construction of many existing golf courses it must be pointed out. To merely allow data centres on the basis of a previous unjust allocation of land would be perpetuating inequity and injustice.
9. The point is, like other extractive industries, hyperscale data centres consume finite public resources while the principal economic benefits flow out of the country to multinational corporations. This raises serious questions of constitutionally protected rights, of distributive justice and public accountability – and development cannot be permitted to come at the cost of the resources that people in South Africa require to realise their basic human rights.

SOUTH AFRICA'S DATA CENTRE LANDSCAPE

10. South Africa has more than 60 known data centres, with a combined disclosed capacity of approximately 500 MW – a load equivalent to more than a quarter of Cape Town's current peak electricity demand.¹³ The planned hyperscale pipeline would transform that picture: single facilities of 100 MW and more, on campuses many times the land footprint of anything yet built here.¹⁴
11. The land dimension carries particular weight in South Africa, where land ownership remains extremely unequal as a result of colonial- and apartheid-era dispossession. Homelessness has increased four-fold since 1996, with the largest concentrations in Tshwane and Johannesburg – key data centre hubs – and millions remain in need of decent housing.¹⁵ Data centre campuses compete for precisely the well-located urban land that could otherwise address that need.
12. Government is actively courting the sector. In his 2026 State of the Nation Address, President Ramaphosa announced that more than R50 billion in digital infrastructure investment was expected over three years.¹⁶ The market is projected to grow from R42 billion in 2025 to more than R81 billion by 2031.¹⁷ Equinix has announced a R7.5 billion expansion plan¹⁸; Teraco – majority-owned by US-based Digital Realty – operates nearly 190 MW and is targeting 500 MW¹⁹; the Cavaliers Group has announced 560 MW of new campuses in Cape Town and Johannesburg²⁰; and Microsoft has committed R5.4 billion.²¹ Between 2019 and 2025, South Africa attracted close to US\$6.5 billion in data centre investment – more than any other country on the continent.²²
13. Addressing the Google Cloud Summit in Johannesburg on 1 July 2026, the President framed data centres as unambiguously positive, tying them to digital public infrastructure reform, job creation and global competitiveness. He acknowledged that the expansion 'brings to the fore important conversations around data sovereignty, human rights and the environmental footprint' and promised it would be done 'sustainably'.²³ Yet he made no mention of water use, of energy requirements often met by polluting fossil fuels, of land use or of community consultation. That gap – between high-level enthusiasm and ground-level accountability – is the subject of this submission.



Sand mounds and building substrate for new construction next to the Atlantic Hills Data Centre.

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Data centre's require extraordinary amounts of electricity and secure grid connectivity.

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THE EQUINIX OBJECTION: A CASE STUDY IN THE INFORMATION VACUUM

14. In April 2026, Housing Assembly and Foxglove, represented by the LRC, objected to Equinix's rezoning application for a hyperscale data centre at King Air Industria in Cape Town. The application contained effectively no information on the facility's likely water consumption, its electricity consumption or sourcing, its diesel-generator emissions, its associated CO2 emissions, its noise impacts, its impact on access to decent housing in the area or the cumulative effect of two adjacent hyperscale facilities being located so close together.
15. On 14 July 2026, the City's Municipal Planning Tribunal approved the application despite these gaps. One member dissented, citing the very real constraints on Capetonians' access to electricity and water: 'I do not have enough information to make an important decision such as this.'²⁴ This is the clearest available example of the problem this submission addresses: a decision of real consequence for a constrained grid and water supply, taken without the basic information needed to weigh its impact. The objectors have appealed this decision.



Large aluminium vents protrude from the Teraco building, likely used to maintain steady airflow and control temperature.

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THE REGULATORY FRAMEWORK AND ITS GAPS

16. There is no single legislative or policy instrument governing data centres in South Africa. Instead, a patchwork of instruments applies to discrete aspects of their development and operation – none of which was designed with facilities of this scale and resource intensity in mind. The table below summarises the principal frameworks and the gap in each.

INSTRUMENT	WHAT IT GOVERNS	APPLICATIONS TO DATA CENTRES	GAP
National Environmental Management Act 107 of 1998 (NEMA) and the 2014 Environmental Impact Assessment Regulations	Environmental authorisation; impact assessments for listed activities	Large facilities and their diesel generator arrays can trigger listed activities requiring environmental authorisation; section 24G rectification is being used to legalise unlawful construction after the fact	No data-centre-specific listed activity; cumulative impacts of multiple facilities are not assessed
National Water Act 36 of 1998	Water use licensing and allocation	Large-scale abstraction and cooling water use may require water use licences	No mandatory disclosure of facility-level water consumption; no aggregate monitoring of the sector
Electricity Regulation Act 4 of 2006	Generation licensing, grid access and tariffs	On-site generation, wheeling arrangements and negotiated pricing agreements	No separate tariff class for hyperscale consumers; risk that grid upgrade costs are borne by ordinary ratepayers
Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) and municipal planning by-laws	Land use, rezoning and municipal planning tribunals	Rezoning and land use applications (such as the Equinix King Air application) are decided at municipal level	No obligation to disclose resource consumption at application stage; inconsistent public participation across municipalities
Protection of Personal Information Act 4 of 2013 (POPIA); National Policy on Data and Cloud (2024); National AI Policy Framework (2024)	Data protection; data localisation; digital infrastructure policy	Data hosted in-country, including by foreign-owned operators; localisation requirements for certain categories of data	Enforcement capacity of the Information Regulator; exposure to foreign extraterritorial access (e.g. the US CLOUD Act); policies frame data centres as a growth priority without rights safeguards

17. The consequence of this patchwork is that no regulator or sphere of government holds a complete picture of the sector's cumulative footprint, and no instrument requires the disclosure that would make such a picture possible. That regulatory gap underpins each of the four asks made in this submission.
18. Other than the regulatory gap, any conduct, legislation, policies and regulatory frameworks need to be rooted in constitutional rights. The regulation of data centres cannot be approached solely as an economic or infrastructure issue, but must be informed by the constitutional obligations resting on the State. These constitutional rights require the State to protect, promote and advance the rights of its residents to: an environment protected for the benefit of present and future generations (s 24); the protection of property rights to enable citizens to gain access to land on an equitable basis (s 25); adequate housing for sustainable and resourced human settlements (s 26); and sufficient food and water (s 27(1)(b)). In the recent landmark Constitutional Court judgment in *Adonisi and Others v Minister for Transport and Public Works, Western Cape and Others (the Tafelberg judgment)*²⁵, the court required that the Western Cape Province prepare a report that sets out its policies and programmes for the provision of affordable housing in the central business district, including the steps taken to give effect to the obligations, the budgetary resources allocated and the projected timelines. The judgment underscores that constitutional obligations require deliberate, evidence-based and accountable planning by the State.
19. Integral to the principle of progressive realisation of rights is the requirement that the State needs to adopt reasonable, adequately resourced and time-bound measures to realise socio-economic rights. We also draw the Commission's attention to the case of *Grootboom*²⁶, wherein the court found that rights like housing cannot be seen in isolation, that there is a close relationship between the right to housing and other socio-economic rights like the right to water, food, sanitation and other basic services. This interconnectedness is important in the context of data centres. Decisions affecting scarce resources, particularly water, electricity and land, inevitably affect the State's ability to plan for and progressively realise these interdependent rights. Moreover, the State's constitutional obligation is to ensure at least a minimum level of access to these rights for those most in need – in other words the bare minimum. Where commercial developments place additional pressure on scarce resources required for the fulfilment of these obligations, the State must carefully assess and justify those impacts before permitting such developments.
20. Therefore, the absence of a national regulatory framework is not just an administrative deficiency; it is a constitutional concern. Without a framework that assesses the cumulative impacts of data centre development on scarce resources, socio-economic rights and indeed the environment, the State cannot demonstrate that it is meeting its constitutional obligations to reasonably plan for and progressively realise the rights to housing and land (and incidentally water, food and basic services).

21. Section 27(1)(b) of the Constitution guarantees the right of access to sufficient water. It is well established that access to water is a socio-economic right incidental to the basic needs of all humans – its protection is rooted in the understanding that water is life; without it we will die.²⁷ Viewed in this constitutional context, a commercial entity, such as a data centre developer, cannot claim an equivalent constitutional entitlement to water that is on a par with communities' right of access to sufficient water. Furthermore, socio-economic rights like water (and housing) impose a positive obligation on the State to take reasonable legislative and other measures to ensure sufficient access to water (and housing). Importantly, where a major threat to water is being posed, the State needs to take the necessary steps to investigate the potential risks and put in place measures to mitigate harm. Where corporations consume scarce water resources for commercial developments and thereby directly threaten humans' access to water, the State has a constitutional duty to ensure that its decisions provide sufficient protection of the constitutional rights guaranteed in section 27.
22. Data centres are significant industrial water consumers, largely for cooling. The foundational study in the journal *npj Clean Water* found United States facilities consuming approximately 1.7 billion litres per day – and, critically, that fewer than a third of operators measure their water consumption at all.²⁸ By one industry survey, only 33–50% of operators report water use.²⁹
23. South Africa cannot afford that opacity. The World Resources Institute rates southern Africa among the most water-stressed regions in the world, and South Africa is rated the 30th driest country, according to a 2022 report by the Department of Water and Sanitation.³⁰ The country's water crisis is worsening: rapidly declining reservoir capacity has led to multiple water shortages across the country in the last ten years. Cape Town reached the edge of 'Day Zero' in 2017/18, and still, in the winter of August 2026, the CoCT's water resource status is set to 'early draught caution' with the city encouraging residents to 'remain water wise and use water responsibly to sustain supply should the drier weather persist for the remainder of winter'.³¹ Johannesburg's deepening water crisis has left reservoirs empty and communities without supply for days at a time.³²
24. The dominant cooling technology is evaporative: approximately 80% of the water withdrawn – typically freshwater – evaporates and is lost, with the remainder returned as wastewater carrying high concentrations of salt and other contaminants.³³ A data centre using traditional evaporative cooling consumes roughly 25.5 million litres of water per megawatt per year. On that measure, Equinix's proposed Cape Town facilities – approximately 174 MW – would consume more than 4.4 billion litres a year: the annual water use of more than 18,000 South African households.³⁴ Those facilities were approved without any water figures before the decision-maker – in a city whose taps nearly ran dry in 2017/18, and across the road from communities in Gugulethu, Barcelona and KTC Nyanga who have to share single communal taps and already experience intermittent access to water.
25. Operators increasingly rebut water concerns by describing new facilities as 'closed-loop', drawing no additional water once filled. Teraco's JB4 expansion, for example, is said to use a closed-loop system requiring no ongoing water supply.³⁵ That claim should be tested, not simply accepted: closed-loop systems trade water for electricity (dry cooling is more energy-intensive); they still require an initial fill and ongoing make-up water (the additional water required to replace losses from evaporation, leaks and cleaning); performance degrades in heat peaks; and the sector's claims are not independently verified anywhere in South Africa.³⁶
26. The pattern that matters for the Commission is constant across these examples: no mandatory water-use reporting, no aggregate national data, and approvals granted before the water question is answered. In a water-scarce country, that sequence is untenable.

ELECTRICITY, TARIFFS AND THE GAS TURN

27. The International Energy Agency projects global data centre electricity consumption to more than double to around 945 TWh by 2030.³⁷ South Africa's disclosed pipeline alone – more than 1,000 MW – exceeds the load Eskom sheds at an entire stage of load-shedding. In Cape Town, four proposed facilities would together draw about 580 MW, roughly a third of the city's peak demand.³⁸ This demand arrives in a country where 'load reduction' already falls hardest on poor households, and where poor households now spend more on electricity than on maize or taxis.³⁹
28. The sector's economics compound the concern. Electricity typically represents only 20% of a hyperscale operator's total cost of ownership, and is largely passed through to customers – so operators have limited incentive to minimise consumption, while the external costs of upgrading the grid to carry these loads fall on the grid and on ratepayers.⁴⁰ In June 2026, New York's legislature passed the first state-wide measure requiring that large data centres be billed in a separate utility class, so that operators – not households – fund the infrastructure they require.⁴¹ South Africa has no equivalent ratepayer protection – and a history that counsels caution: the National Energy Regulator of South Africa's special pricing agreement for South32's Hillside smelter cost Eskom an estimated R92 billion, a warning of what non-transparent, negotiated tariffs for large industrial consumers can do. The corporations that consume the most electricity in South Africa have historically enjoyed lower prices that are subsidised by higher prices for ordinary South Africans.⁴²
29. Because grid connections are the sector's bottleneck, developers are turning to gas. The African Energy Chamber markets Africa's natural gas as the answer to data centre power demand – its Executive Chairman describes this as 'not just an energy question but an economic strategy' – and liquefied natural gas (LNG) import infrastructure is advancing at the Port of Ngqura, Richards Bay and the Coega Industrial Development Zone, with ExxonMobil signed to supply South Africa's first planned LNG terminal.⁴³ A data-centre-driven gas build-out would lock in fossil infrastructure for decades, complicate the just energy transition and burden port-adjacent communities that already carry industrial pollution – while the primary beneficiaries would again be data centre operators. Whatever progress South Africa has made towards decarbonisation, a fleet of gas infrastructure built to serve data centres threatens to reverse those gains within a single investment cycle – committing the country to rising emissions at precisely the moment they must fall.
30. South African courts have already shown what proper scrutiny looks like: in September 2025 the Supreme Court of Appeal set aside environmental authorisation for Eskom's proposed 3 GW gas-to-power plant at Richards Bay on the basis of flawed public consultation and failure to consider alternatives.⁴⁴ Data-centre-driven energy demand must not become a route around that scrutiny. If operators are not bound to build or fund new renewable generation equal to their own demand, their load will be met by burning more coal and gas – with air-quality and climate consequences felt for generations. No such requirement currently exists in South Africa.



An Eskom sign warns potential dumpers about the fire risk of overhead lines. Eskom has recently achieved 400 days without load shedding.

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LAND AND ENVIRONMENT

31. In South Africa the land question is, in part, one of competition for well-located urban land – land that could otherwise provide housing – though facilities are also beginning to compete with agricultural land. This competition must be understood against South Africa’s history of dispossession and spatial inequality. Section 25 of the Constitution reflects the transformative imperative to redress the legacy of apartheid-era land dispossession by enabling equitable access to land and restoring dignity to those who were historically marginalised. The allocation of scarce and well-located land to resource-intensive commercial developments must therefore be assessed within this constitutional context. Data centres are land-intensive: beyond the server halls, a hyperscale campus requires land for security buffers, power infrastructure and future expansion. The two developments proposed in Cape Town span 120,000 square metres – approximately 17 soccer fields – and the United Nations University projects that by 2030 the global land footprint of AI data centres will be twice the size of the Jakarta metropolitan area.⁴⁵
32. The agricultural dimension is no longer hypothetical. In the Free State, Teraco’s 270-hectare, 120 MW Sediba solar facility near Parys – built to power its data centres – occupies prime agricultural land equal in size to 47 Cape Town Stadiums, and the African Centre for Biodiversity has documented data centre energy infrastructure competing directly with smallholder and food-producing land in the province.⁴⁶ Rezoning farmland for data centre sites ‘reduces areas for food production, agriculture and biodiversity’ – engaging the rights to sufficient food (s 27(1)(b)) and to legally secure tenure (s 25(6)), and, where generation infrastructure follows, compounding the land take. When renewable energy is built to serve private data centres rather than the public grid, its costs are localised while its benefits are privatised.
33. Environmental harm follows the land take: habitat loss in sensitive areas that serve as carbon sinks; deforestation and site preparation that worsen air quality; and altered drainage that compromises water quality in nearby waterways and aquifers.⁴⁷ Backup diesel generation adds a localised air-quality burden: in at least one case, an operator applied to Gauteng authorities to regularise a more than two-fold increase in its diesel-generator capacity which, by its own admission, ‘commenced unlawfully in contravention of section 24(G) of the NEMA’.⁴⁸ There is no aggregate picture of how many facilities are expanding first and asking permission later.
34. Read together, sections 24, 25, 26 and 27 of the Constitution require that development which consumes water, land and energy at this scale be assessed – before approval – against its impact on the environment, land, housing and on access to water and food. South Africa’s history of colonial- and apartheid-era land dispossession makes the careful shepherding of a land-intensive new sector not merely prudent but a constitutional imperative.
35. In the Tafelberg judgment the court remarked that the submissions made in that case on addressing the legacy of spatial apartheid highlighted the ‘crucial’ distinction between distributing resources and ensuring those resources are distributed in a manner that ‘actively dismantles historical inequalities shaped by race and class along geographical lines’.

WHO BENEFITS? JOBS, DUE DILIGENCE AND THE EXTRACTIVE PATTERN

36. The economic and social benefits of hyperscale data centres are fundamentally uncertain – and there is no agreed method for calculating them, leaving the calculations that drive decisions to the companies that stand to benefit most. While incoming investments for data centres are welcome, their market is currently heavily lopsided with most operators in South Africa being US-based firms, including Digital Realty and Equinix. Similarly, data centres need graphics processing units or specialised AI chips. The market for these chips is dominated by Nvidia, another US firm, which controls more than 85% of the global AI-chip market.⁴⁹ As a result, a large proportion of the benefits from data centre development are expected to flow directly out of the country to component manufacturers and real-estate developers abroad, for example. Construction jobs are real but temporary – and that labour has high value in other sectors, such as housing.
37. Operational data centres provide few permanent jobs as these are capital-intensive infrastructure compared to labour-intensive sectors such as manufacturing. Data centres are among the least efficient job creators per rand invested. The Wall Street Journal has reported on the “Job Creation Bust” of data centres in the US, and the Financial Times has done the same for the UK, saying: “There might be good reasons to build data centres in Britain. Job creation isn’t one of them”.⁵⁰ Against these uncertain benefits stand concrete, foreseeable costs to constitutional rights: water (s 27(1)(b)), a healthy environment (s 24), just administrative action (s 33), access to information (s 32) and dignity (s 10). No equivalent employment data have been published for South African facilities – a gap the transparency measures proposed in this submission would close.
38. As outlined above, hyperscale data centres share the defining features of extractive industries: they consume finite public resources while the principal economic benefits flow out of the country to multinational operators – mirroring a defining feature of South Africa’s own extractive history. Yet South Africa already regulates comparable sectors on a social-licence basis: mining requires a Social and Labour Plan under the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) as a condition of the right, and utility-scale renewables under the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP) require community equity and socio-economic development commitments. Data centres draw on the same shared resources but carry none of these binding community-benefit obligations. That asymmetry will bear hardest on those living in the greatest poverty.
39. The UN Guiding Principles on Business and Human Rights require States to protect against business-related rights violations; companies to respect rights and conduct human rights due diligence; and affected people to have access to remedy. We have seen no evidence that due diligence of this kind is being conducted, required or disclosed by any operator in South Africa. It should be a precondition of any licence to develop a data centre and a continuing obligation across the facility’s life and supply chain – extending to the financial institutions funding these developments and the technology companies relying on them, wherever headquartered.

TRANSPARENCY, PUBLIC PARTICIPATION AND FREE, PRIOR AND INFORMED CONSENT

40. Meaningful public participation requires that the public have access to the information on which a decision turns, in time to respond and to contribute meaningfully to the decision-making process. The distinct principle of free, prior and informed consent further protects marginalised and directly affected communities, whose consent must be sought before decisions that materially affect their rights are taken. These are separate duties, each of which must be fulfilled in relation to the relevant rights-holders.
41. In the developments we have examined, these requirements have not been met. There is no centralised repository of freely accessible information for citizens to consult; consultation documents, including environmental assessments, are posted online only briefly, so that developments can fly under the radar of public scrutiny; facility-level water and energy figures are withheld as commercially sensitive; and Eskom and several municipalities have refused to disclose consumption data. Requests under the Promotion of Access to Information Act 2 of 2000 have been necessary to obtain what should be public by default.⁵¹ An information environment this asymmetric cannot support informed consent – and the resulting community concern is a rational response to that asymmetry, not an overreaction to it.

PRIVACY, DATA PROTECTION AND DISINFORMATION: ISSUES THE COMMISSION SHOULD KEEP IN VIEW

42. Beyond the physical and environmental impacts, the expansion of data centre infrastructure raises distinct concerns the Commission should keep in view. Three stand out. First, enforcement capacity: POPIA and the 2024 National Policy on Data and Cloud emphasise where data must be stored, but the Information Regulator's resourcing and practical ability to hold domestic and multinational processors accountable remain comparatively under-examined – localisation without enforcement risks the appearance of protection without its substance.⁵² Second, concentration and foreign jurisdiction risk: South Africa's digital infrastructure is increasingly dominated by a small number of foreign hyperscale operators, raising unresolved questions of extraterritorial legal reach (for example under the United States' CLOUD Act) and of critical-infrastructure resilience. Third, disinformation: the same compute infrastructure that enables digital public services also enables the generation of manipulated content at scale, in a country whose population ranks as the most 'propagandised' in the world on the Ipsos Perils of Perception Index 2026.⁵³ These are flagged as emerging risks warranting the Commission's scrutiny, rather than fully documented harms; the pace of infrastructure expansion is currently outpacing the regulatory and oversight capacity needed to manage its consequences.

INTERNATIONAL PRECEDENTS: PAUSES THAT LET REGULATION CATCH UP

43. Several jurisdictions have used a temporary pause to allow regulation and public understanding to catch up, and then re-opened on stricter terms. Singapore imposed a moratorium in 2019 and lifted it in 2022 with mandatory efficiency and sustainability conditions. Amsterdam imposed a moratorium in 2019 and still restricts the largest facilities. In Ireland – where data centres’ metered electricity consumption reached 23% of the national total, more than all urban dwellings combined – the regulator’s de facto moratorium on new Dublin-area grid connections, in place since 2021, was lifted in December 2025 only on strict terms including on-site generation.⁵⁴ In the United States, around US\$64 billion in projects has been blocked or delayed, and in June 2026 New York’s legislature passed the Responsible Data Center Development Act (Senate Bill S10642), a one-year pause on permits for new large data centres while the state studies the sector, billing them in separate electricity and water rate classes so that operators, not households, fund the infrastructure they require.⁵⁵ In Scotland, proposed facilities totalling 4,749–5,249 MW – exceeding the nation’s entire winter peak demand of 4,000 MW – have prompted the governing party’s national council to call for a freeze.⁵⁶
44. These are pauses designed to let regulation catch up – not outright bans. South Africa’s opportunity is to learn from them and set sensible terms before its largest facilities are built, rather than regulating after the fact.



De Noon residents play football while the AWS data centre watches on.

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RECOMMENDATIONS

43. We respectfully recommend that the Commission consider the following measures, each of which gives effect to one of the four central asks set out in the executive summary.

In support of the **first** ask (a transparency-based national framework):

- mandatory per-facility disclosure of electricity and water consumption under environmental-assessment law;
- a statement that developers may not rely on NEMA section 24G rectification or generic industrial classifications to avoid scrutiny;
- a publicly accessible national data centre registry recording the location, operator, IT load, energy source, water use and independently verified employment figures of every operational and approved facility;
- binding community-benefit, local-procurement and reporting obligations modelled on the mining and renewable-energy sectors;
- human rights due diligence consistent with the UN Guiding Principles, binding on government and operators, with provision for remedy;
- approved decommissioning and rehabilitation plans as a pre-construction requirement;
- ratepayer protection on the New York model;
- a requirement that operators build or fund new renewable generation at least equal to their demand; and
- training and additional resources for municipalities.

In support of the **second** ask (a factual baseline):

- an independent assessment of the human rights, ecological and economic costs and benefits of data centre investment in South Africa.

In support of the **third** ask (breathing space for regulation):

- open consideration of a temporary moratorium on new hyperscale developments pending that assessment and the framework above.

In support of the **fourth** ask (independent monitoring and enforcement):

- establishment of an independent panel on data centres to monitor and regularly assess facilities across a range of measures (including water use, electricity and land use) and their compliance with applicable laws and policies (including NEMA, SPLUMA and the Constitution), with strict financial penalties and criminal prosecution for operators found to be flouting the rules.

RECOMMENDATIONS

46. South Africa needs digital infrastructure. However, digital infrastructure cannot be ungoverned, unscrutinised and unaccountable. The principles of technological infrastructure development that President Cyril Ramaphosa has articulated⁵⁷ – ‘to ensure that the technologies shaping tomorrow are developed in ways that advance human dignity, expand opportunity and improve the lives of all our people’ – are the right ones. This submission asks the Commission to give them practical force: to insist on the transparency that makes rights protection possible, to establish the factual baseline that is currently missing and to ensure that no further hyperscale development is approved until South Africans can see, and weigh, its true costs. The submitting organisations would welcome the opportunity to engage further with the Commission.



A man inspects the heavily polluted Kuils River AWS's 57 MW data centre next to the Cape Town Film Studio site in the background.

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