

To: THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

**SUBMISSION ON DATA CENTERS IN RESPONSE TO PUBLIC
INVITATION BY THE SAHRC**

DATED at CAPE TOWN on this 30th day of July 2026

**Submitted by: Southern African Faith Communities' Environment Institute
(SAFCEI)**

Per: F de Gasparis

A handwritten signature in blue ink, appearing to read "F de Gasparis", with a stylized flourish at the end.

.....
Executive Director.

The Green Building
Bell Crescent,
Westlake Business Park,
Cape Town.
francesca@safcei.org.za

And To:

The SAHRC

Dr E. Carter – ecarter@sahrc.org.za
And B.Ainslie– bainslie@sahrc.org.za

Re: Data Centres and Human Rights Submission

This submission is made by SAFCEI in response to an invitation to identified sectors to make submissions by the SA Human Rights Commission (the Commission), dated 6th July 2026 regarding human rights implications of the rapid expansion of data centres and digital infrastructure in South Africa. At the SAFCEI AGM held 30 July 2026, over 100 SAFCEI members and concerned public who were present endorsed this submission

The Commission is mandated to *monitor, assess, investigate and report on the observance of human rights in South Africa, including emerging systemic issues which may affect constitutional rights and freedoms.*

The Commission's invitation states:

South Africa has experienced significant growth in the establishment and expansion of data centres, cloud infrastructure and related digital systems. While these developments may support economic growth, digital transformation and artificial intelligence readiness, they also raise important human rights, environmental, governance and public-interest considerations.

From this statement it is clear that the Commission acknowledges that there has been significant growth in the establishment and expansion of data centres, cloud infrastructure and related digital systems and that assessment is required in order to protect human rights that could potentially be violated by these developments.

Recent 2026 news reports indicate that currently at least 3 large scale data centers are planned for construction in Gauteng, Cape Town and KZN and which would *push current IT power load to well over 1,200 MW – which is equivalent to just over one stage of Eskom load shedding (1,000 MW).*¹

The Commission states that it is therefore

..undertaking a high-level stakeholder engagement process to assess whether current legal, regulatory, environmental, governance and industry frameworks relating to data centre development are aligned with constitutional obligations, international human rights standards and recognised best practice principles, including business and human rights standards.

The Commission accordingly invites written submissions on, amongst others, the following themes:

- *Human rights impacts associated with data centre development;*
- *Environmental sustainability, including electricity and water usage;*
- *Climate and environmental justice considerations;*
- *Community consultation and public participation processes;*
- *Privacy, data protection and cybersecurity considerations;*
- *Business and human rights due diligence;*
- *Transparency, governance and accountability mechanisms;*
- *International and comparative best practice frameworks;*
- *Regulatory gaps or compliance concerns; and*
- *Recommendations for rights-based governance and oversight*

¹ Posted on 11 February 2026 by [Tony Carnie](#) Major SA data centre expansion plans emerge, set to more than double current power demand

This submission will emphasize the need for transparency, governance and accountability mechanisms in order to ensure that the constitutional obligations are met, while promoting sustainable development. It will focus on climate justice and financial sustainability.

OVERVIEW

A number of large data centers are planned for Gauteng Cape Town and Amanzimtoti. As will be clear from this submission these centers will have a significant impact on water and electricity consumption, as well as land use planning and access to well-located land for communities excluded by apartheid. They could drive up the prices and availability of water, electricity and urban land for housing and may threaten food security of communities already struggling for access thereto. They also stand to promote dependence on fossil fuels including coal and diesel.

CURRENT LEGISLATION AND POLICY

Current legal, regulatory, environmental and governance frameworks do not refer explicitly to data centres except for the National Data and Cloud Policy promulgated under the Electronic Communications Act² Existing legislation relating to environmental, energy, land and other governance predates the emergence of artificial intelligence and its demand for massive data centres, and will have to “catch up” to the changes that these proposed centres will bring, in order for constitutional rights to be protected and in particular in order to ensure that the state complies section 195 of the Constitution which requires it to ensure that

- 195(2) (b) *Efficient, economic and effective use of resources must be promoted,*
- (e) *People's needs must be responded to, and the public must be encouraged to participate in policy-making.*
- (g) *Transparency must be fostered by providing the public with timely, accessible and accurate information.*

Policy processes relating to energy such as the **Integrated Resource Plan** similarly do not refer to artificial intelligence and data centres, and future iterations of the policy will have to consider large scale demands for electricity planned for these centres, in order to inform planning and decision making on electricity consumption in the future.

The Electronic Communications Act refers to data centres as electronic communications facilities. A **National Data and Cloud Policy** has been promulgated under the Act that acknowledges that data centres “require vast volumes of water” and recommends that “*consideration should be given to ensuring that data centre providers ensure that they make self-provisioning for water and electricity self-provisioning while addressing carbon emission reductions to mitigate against environmental degradation.*” It states that the

² Act 36 of 2005

government may need to develop incentive schemes to encourage water and electricity conservation by data centre operators.³ "Consideration" is a very weak requirement and therefore this policy falls far short of requiring mandatory self-provisioning for water and electricity, (save for backups)⁴ leaving the issue open to administrative discretion.

The Policy essentially requires data centres to be built and operated in terms of current legislation and does not provide guidance or detail that would align it with constitutional obligations, international human rights standards and recognised best practice principles, including business and human rights standards. It states:

In terms of paragraph 15.1.6 of the policy all data centres in South Africa must comply with the several requirements related to location,⁵ and in addition it states:

15.1.6.6 Priority should be given to the self-provision of electricity and water for the operations of data centres to ensure continuous operation and reduce dependency on the national grids.

It is not clear what "priority must be given to self provision of electricity and water" actually means in regulatory terms. There is therefore broad regulatory discretion around the governance of these entities and little regulatory guidance as to how to protect human rights particularly regarding water and electricity governance. Although the facts of this case might not align precisely with the issue of authorising data centres, it should be noted that the Constitutional Court in Dawood and other v the Minister of Home Affairs⁶ has ruled that broad statutory powers granting officials an unguided, unfettered discretion affecting fundamental constitutional rights are inconsistent with the Constitution and invalid.

PLANNED LARGE SCALE DATA CENTERS

Currently a 160 MW data centre is planned for a site in Cape Town near the airport and a 200 MW data centre on a 40 hectare site is planned for the Kosmosdal/Samrand area near Midrand.⁷ So far the Ethekweni Municipality has signed an MOU with a Korean entity to explore feasibility of a plant which would use 400 MW and would be located close to Amanzimtoti in the Lovu river.⁸

³ Paragraph 15.1

⁴ Paragraph 15.1.11

⁵ Data centers must be built and operated in adherence to environmental legislation and building by-laws; must not be built in restricted areas such as heritage sites, national key points, or land designated for land reform; must not be located in areas prone to natural disasters or social disturbances ; must display / provide verifiable certification credentials to all potential customers must prioritise the self-provision of electricity and water

⁶ *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* [2000] ZACC 8; 2000 (3) SA 936 (CC); 2000 (8) BCLR 837 (CC).

⁷ id

⁸ SA's biggest data center 'monster' set to consume 25% of Durban's electricity https://www.dailymaverick.co.za/article/2026-03-04-sas-biggest-data-centre-monster-set-to-consume-25-of-durbans-electricity/?dm_source=blocks-grid-wide&dm_medium=card-link&dm_campaign=inform

HUMAN RIGHTS IMPACTS ASSOCIATED WITH DATA CENTRE DEVELOPMENT

Regarding the existing regulatory system the following observations can be made:

The Constitution mandates the state to promote the rights contained therein which include the right to information, fair administrative action, environment, access to housing and water and land. Several statutes have been implemented to give effect to these rights and would be applicable to applications for authorisation of data centres. However, the following general deficiencies would apply:

ACCESS TO INFORMATION

Given the risks to human rights that will be set out in this submission, and the sheer scale of these data centres, the utmost transparency is imperative in order to ensure constitutionally compliant decision making ie decision making that is capable of delivering economically and environmentally sustainable outcomes. The overarching statutes applicable are the Promotion of Access to Information Act and the Promotion of Administrative Justice Act.

While POAIA contains certain exclusions of access to information, for example based on commercial confidentiality,⁹ administrative decisions taken in the absence of transparency may be reviewable if insufficient information was placed before the public for it to meaningfully participate in participatory decision making processes. It has long been recognised that a fair decision-making process requires (among other things) that a person 'must be put in possession of such information as will render his [or her] right to make representations a real, and not an illusory one'. Hoexter points out that there is '*a crucial link between the amount and type of information disclosed to an affected person and the quality of his or her opportunity to make representations*'.¹⁰

So far there have been several complaints about lack of transparency in decision making processes concerning proposed large scale data centres. A submission by the Legal Resources Centre to the Cape Town Municipal Planning Tribunal in April 2026 opposing a rezoning application for the massive 174 MVA Equinix data centre at King Air Industria cited a severe lack of transparency regarding resource consumption, environmental impact, as well as vague municipal definitions. In Durban concerns as to lack of transparency have been voiced when preliminary approval was sought in the council for the signing of a memorandum of agreement for a large scale Korean data centre. These include that full energy and water impacts remained undefined, the environmental implications were unclear, local economic participation was not guaranteed, and public participation had not yet taken place. Also that there were "still too many unanswered

9

¹⁰ (Heatherdale Farms v Deputy Minister of Agriculture 1980 (3) SA 476 (T) (486F-G)). Hoexter (2nd edition, 2018), Administrative Law in South Africa, at p371, referring to by the Constitutional Court in Bengwenyama Minerals v Genorah Resources 2011 (4) SA 113 (CC) paras 69-74.

questions at a time when Durban was already battling an unstable electricity supply and significant council water losses exceeding 50%.¹¹ (emphasis added)

Transparency does not only appear to be a South African concern. Information is not only required by the public in order to participate meaningfully in decision making, but also by the State, in order to inform planning. In other jurisdictions such as the USA access to information pertaining to data centers, even at the level of federal government has been a challenge. The USA Energy Information Agency has noted significant obstacles to collecting the information on data centres.¹² In 2024, EIA attempted to collect information focused on cryptocurrency mining data centres but was forced to abandon this and destroy data collected after being challenged by a trade association focused on blockchain and cryptocurrency technologies and a Bitcoin mining company.¹³

In submissions before the USA Congress it was noted that how information is collected could have consequences for the subsequent uses of that information, including the extent to which it can be used as an authoritative source to inform federal energy policy or regulation. In other words, how statute directs the collection of information on data centre's energy use, or how an agency designs its collection of information on such energy use, may influence the extent to which such collected data can then be used to reliably serve certain purposes. The data, for example, may be not be generalizable, may be incomplete (e.g., certain information is missing or underreported), inaccurate (e.g., certain information is underestimated or overestimated), or otherwise limited in its usefulness because of circumstances that occurred during data collection.¹⁴

For South Africa, it follows that governance provisions need to be established in order for the state to be able to access information about water and energy use by these centers so that it can plan, as it seems unlikely that these plants will provide all of their own energy and electricity.

As far as the public is concerned there is a need for certainty as to what information must be disclosed to ensure that levels of transparency and effective public participation are compliant with section 195 of the Constitution, and to prevent disputes over claims of commercial confidentiality.

Recommendation

Regulatory provisions which make clear what information must be disclosed by data centres in order to satisfy transparency and participation requirements in policy and legislative processes, as well as in general regulatory processes, are required in order to prevent disputes over what can be claimed to be commercially confidential information, and to promote public participation. Data such as water and electricity consumption and mitigation measures and their effectiveness in regard thereto must be explicitly excluded from the definition of commercially confidential information.

¹¹ <https://www.dailymaverick.co.za/article/2026-03-04-sas-biggest-data-centre-monster-set-to-consume-25-of-durbans-electricity/>

¹² EIA, 2018 CBECS Data Centre Pilot, p. 2.

¹³ Notice of Agreement, Tex. Blockchain Council v. Dep't of Energy, No. 6:24-cv-99 (W.D. Tex., March 1, 2024), ECF No. 24.

¹⁴ <https://www.congress.gov/crs-product/R48646#fn78>

RIGHT TO ENVIRONMENT

The Constitutional right to environment is given effect to in statutes such as the National Environmental Management Act,¹⁵ which lists activities that require environmental impact assessment. Data centres are not identified as a listed activity as such but are likely covered under other listed activities.¹⁶ Listing of data centres under the EIA regulations would improve on regulatory certainty concerning the requirement of an environmental impact assessment and is recommended.

Environmental impact assessments are however deficient in assessing and mitigating all the relevant environmental impacts of large scale data centres because they are project specific, and are not required to consider the cumulative impacts of such centres at a national level. These cumulative impacts could be significant, depending on the scale of the centres and the technologies employed and could impact on access to water, electricity by other users regionally and nationally. Socio economic impacts such as increased costs of water, electricity, and access to well-located land for housing in cities could result from inadequate or deficient planning and assessment of cumulative impacts of data centres. The result could violate the constitutional right to environment, access to water and access to housing.

Recommendation

This deficiency needs to be addressed in a transparent and consultative manner in order to ensure that these macro impacts are assessed and addressed in a manner which promotes sustainable development and fosters the rights contained in the Bill of Rights, beyond the narrow confines of assessment under the NEMA EIA process.

RIGHT OF ACCESS TO WATER

Health care, food, water and social security

27. (1) *Everyone has the right to have access to—*

(b) sufficient food and water; and

.....

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

Large scale data centres can place a massive demand on available water resources.

¹⁵ Act 107 of 1998

¹⁶ For example Activity 2 of Listing Notice 2 GNR 984 of the 2014 EIA regulations promulgated under section 24(5) of NEMA lists the development of facilities or infrastructure for the generation of electricity from a non renewable resource where the output is 10 MW or more is a listed activity requiring scoping and environmental impact assessment. Data centers including Equinix include diesel generators used for power generation of over 10 MW and these would require an environmental impact assessment as part of the authorisation application.

Significant and rising water use, particularly due to increased AI adoption poses a major sustainability challenge to regulators when faced with applications to authorise large data centres. A study by the International Energy Agency estimates, for illustration, that a 100 megawatt U.S. data centre may consume roughly 2 million litres (roughly 530,000 gallons) per day, averaged across the various cooling strategies, with 725,000 litres per day consumed on site, or a little less than 40%.¹⁷ According to the World Economic Forum (WEF) 1 megawatt (MW) data centre can use up to 25.5 million litres of water annually just for cooling – equivalent to the daily water consumption of approximately 300 000 people. This water consumption exacerbates water stress, especially in vulnerable regions and communities already facing shortages.¹⁸ In drought prone areas climate change will exacerbate challenges to access to water in the future. The location of large scale data centres in water scarce areas will compound the problem of access to water, depending on their water consumption.

The WEF states the challenge to water and potential solutions as follows:

"Data centre servers generate significant heat and removing that heat at scale requires either water, electricity, or both. The cheapest method is evaporative cooling: outside air passes over wet media or through a cooling tower, the water evaporates, and the phase change carries heat away. This consumes water but uses relatively little electricity. The opposite end is refrigerant-based cooling: zero water, much higher electricity bill. Most large facilities are somewhere in between. Sources of water are potable water, non potable water and reclaimed or recycled water."

Innovative circular water management solutions – from optimisation to replenishment initiatives are needed to cut consumption and safeguard fresh water for local communities. Scaling water circularity solutions requires collaboration among operators, innovators and local stakeholders to build a sustainable digital ecosystem."

Concerns have however been raised that water circularity can generate hazardous chemical substances and raise the consumption of electricity.

Turning to local plans to locate new mega data centres, media reports indicate that water availability for heavy industry in Kosmosdal is constrained by severe municipal supply pressures, frequent infrastructure maintenance, and high system demand. The area relies on bulk delivery via the Kosmosdal Meter fed by Rand Water and managed by the City of Tshwane, which routinely struggles with low baseline pressure and potential water restrictions.¹⁹ Midrand similarly suffers from systemic water supply disruptions. A report by the South African Institution of Civil Engineering (SAICE)²⁰ states:

¹⁷ <https://www.congress.gov/crs-product/R48646>; IEA, Energy and AI: World Energy Outlook Special Report, April 2025, p. 242, <https://iea.blob.core.windows.net/assets/34eac603-ecf1-464f-b813-2ecceb8f81c2/EnergyandAI.pdf>. IEA assumes a load factor of 55% for the data center's electricity consumption. IEA further employs a water intensity factor of 0.55 liters/kWh. Noelle Walsh-Elwell, "How Microsoft Measures Datacenter Water and Energy Use to Improve Azure Cloud Sustainability," Microsoft Azure Blog, April 22, 2022, <https://azure.microsoft.com/en-us/blog/how-microsoft-measures-datacenter-water-and-energy-use-to-improve-azure-cloud-sustainability/>.

¹⁸ <https://www.weforum.org/stories/climate-action/circular-water-solutions-sustainable-data-centers>

¹⁹ <https://www.tshwane.gov.za/?p=52532>; <https://www.sabcnews.com/sabcnews/tshwane-says-excessive-water-use-putting-system-under-strain/>

²⁰ February 12, 2026 When Infrastructure Fails, Society Pays – Lessons from Midrand and Gqeberha Water Crisis

The ongoing water disruptions affecting parts of Midrand (Gauteng) and Gqeberha (Eastern Cape) have often been described as isolated incidents, the result of power failures, pipe bursts, or operational setbacks. Yet from an engineering perspective, these events point to something more fundamental. They are not sudden or unpredictable failures, but the foreseeable outcome of infrastructure systems that have been operating for years under sustained stress, without adequate maintenance, renewal, or technical oversight.

Cape Town faces a growing population and intermittent threats that “day zero” is a real possibility if consumption is not constrained.²¹

It appears likely from these reports that water supplies will be constrained for the foreseeable future in the three metropolises where large scale data centres are planned. Already in the Gauteng and Pretoria areas residents regularly go without water for days on end.²² Constitutional rights of access to water are under continual pressure and concerns have been raised as to how massive consumers of water in the form of mega data centres can be accommodated in these areas without causing a systemic violation of the constitutional right of access to water.

To an extent water consumption by data centres may be capable of a degree of mitigation with technology such as circular water management, but this process may also have adverse environmental impacts, such as the concentration of existing minerals and chemicals into hazardous waste streams like cooling tower blowdown, treatment chemicals, and legacy pollutants.²³ At a macroeconomic level, the cumulative impact of a number of large scale data centres and their water use could pose a risk that the right of access to sufficient water by the populus in general and by disadvantaged communities in particular could be limited, due to decreased availability and/or increases in price. The question arises as to whether this risk has been assessed in a transparent and fully informed manner and if not such assessment should be undertaken that comprehensively assesses these implications and whether mitigation measures are feasible.

Recommendation

It is recommended a transparent process be undertaken to assess all aspects of the risk to access to water posed by data centres currently in existence and planned for the future. Potential mitigation measures, and their limitations and potential environmental impacts should be included in the assessment. Appropriate regulatory provisions to minimise this risk must be considered once the risk has been assessed.

ACCESS TO LAND, HOUSING

The following fundamental rights are enshrined in the Constitution.

Access to Land

²¹ <https://infrastructurenews.co.za/2026/02/04/cape-towns-water-use-remains-too-high-despite-day-zero-lessons/>

²² <https://iol.co.za/news/south-africa/2026-02-12-dry-taps-empty-pockets-how-joburg-residents-and-businesses-are-battling-chronic-water-shortages/>

²³ <https://ide-tech.com/en/blog/data-centers-water-turning-cooling-tower-blowdown-into-a-strategic-resource/>

25. (5) *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*

Housing

26. (1) *Everyone has the right to have access to adequate housing.*

(2) *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.*

The Spatial Planning Land Use Management Act²⁴ mandates decision makers to ensure equitable access to land and to correct spatial development planning and land use laws and practices that were "based on racial inequality; segregation; and unsustainable settlement patterns...."²⁵.

Section 6 of SPLUMA contains a set of principles which must be applied by organs of state when implementing legislation for the development of land. Section 7 sets out the principle of spatial justice which requires decision makers in spatial planning to redress past spatial and other development imbalances through improved access to land.

The Constitutional Court in *Adonisi and Others v Minister for Transport and Public Works, Western Cape and Others; Minister of Human Settlements and Another v Minister for Transport and Public Works, Western Cape and Others* (CCT 126/24; CCT 128/24) [2026] ZACC 29 (2 July 2026) has recognised that the right to housing includes a duty on decision makers to consider providing meaningful access to housing within the city and other economic nodes. See:

[98] *There are few settings in which South Africa's endeavour for constitutional transformation is more vital than spatial inequality and its relationship to the right to adequate housing. The elaborate system of the Group Areas Act, influx control and forced removals was designed to create and entrench spatial segregation. Townships were established on the peripheries of "white" towns, separated from economic opportunities and services. [126] As Majiedt J observed in Thubakgale, offers of housing in distant locations are "troublingly reminiscent of apartheid spatial planning, in terms of which black people were shunted away to places far from their workplaces, schools and medical facilities". [127] The constitutional project is inherently about reversing this spatial injustice.*

[115] *A housing system that only considers providing social and affordable housing on the periphery of urban centres falls short of the obligation to progressively realise the right to adequate housing. Such a system of peripheral housing would deny people meaningful access to the city, leaving them with limited and inadequate options.*

[116] *In the urban context, the concept of the right to the city demonstrates that adequacy necessarily includes a consideration of the location of social and affordable housing within the city. Against this backdrop, the right to housing*

²⁴ Act 16 of 2013

²⁵ SPLUMA recognizes that multiple laws have created social and economic issues that are reinforced through land use, management, and development, such as unfair discrimination and fragmentation. See SPLUMA, Preamble.

should be understood as a collective right over urban space within a larger struggle to transform antiquated, repressive social and economic relations and concentrated power structures.

Large scale data centres require large tracts of vacant land and to date the proposed data centres have sought locations close to cities and economic nodes in Gauteng and Cape Town. At the same time communities that have suffered the brunt of apartheid town planning relegating them to live on the urban periphery continue to campaign for access to well-located land close to cities and jobs. The regulation of data centres needs to ensure that land use decisions authorising large scale data centres take into account the imperative to address apartheid town planning and do not compete with these demands for apartheid redress.

CLIMATE CHANGE CONCERNS

Climate change will have an impact on water availability in water scarce regions such as the Western Cape, and the siting of such plants in these areas should be avoided given the scale of their water consumption, and the uncertainties in planning for climate related stresses on water resources in the future.

Carbon dioxide and water are inextricably linked and climate change is already stressing drought-prone areas around the world.²⁶ According to an August 2021 report by the Intergovernmental Panel on Climate Change, scientists have high confidence that for every half degree Celsius (0.9 degree Fahrenheit) the atmosphere warms, noticeable increases will occur in some regions in the intensity and frequency of droughts that harm agriculture and ecosystems. Similarly, the report notes that extreme agricultural and ecological drought events that used to occur once every 10 years are now 1.7 times more likely than they were from 1850 to 1900, before humans heavily influenced the climate.²⁷ South Africa is a water scarce country, and it is prone to droughts, with Cape Town continually facing the prospect of "day zero" while being a rapidly expanding metropole. This situation of drought and water scarcity, while facing rising demand, is likely to get worse in the Western Cape given climate change.

CONCLUSION

The commission has acknowledged that the development of data centers is currently growing fast. A number of significant potential impacts have been identified as set out above. Urgent action is justified to ensure that constitutional rights are not adversely affected, and before potentially irreversible consequences of inappropriate decisions happen. By inappropriate decisions we submit these are decisions that do not properly integrate all relevant considerations and potential adverse impacts in authorisation processes, due to a lack of regulatory integration and policy guidance, in this very new regulatory terrain.

²⁶ <https://yaleclimateconnections.org/2023/05/climate-change-and-droughts-whats-the-connection/>

²⁷ <https://yaleclimateconnections.org/2023/05/climate-change-and-droughts-whats-the-connection/>;
<https://www.ipcc.ch/report/ar6/wg1/#SPM>

Although South Africa has robust constitutional provisions our policy and regulatory environment is insufficiently detailed in order to assess the impacts of mega data centers and protect human rights that could be affected. It is not clear that a **risk and feasibility assessment** has been undertaken. Such assessment, in order to be constitutional it would have to be transparent and participatory. Depending on the findings, policy and regulatory provisions can be developed.

Our environmental law mandates the consideration of a precautionary approach when the impacts of an activity are not yet clear ie that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.²⁸

SAFCEI calls on the Commission to recommend a precautionary approach that has the following features:

- (i) That all authorisation processes for all proposed data centers beyond those that have already been constructed be stopped until the risks related to access to water and electricity, and to financial sustainability of Eskom and the fiscus have been assessed. This includes ascertaining which entity will assume financial responsibility for supplying the enormous amounts of water and electricity to these entities.
- (ii) Such assessment must include potential climate change impacts in the long and short term as well as the impact of climate change on siting these centers in water scarce regions;
- (iii) Such assessment be undertaken with full participation and access to information as to water and electricity consumption and potential mitigation measures;
- (iv) That following such assessment policies and regulations be considered that will ensure that none of the human rights referred to above are threatened by the authorisation of proposed data centers, and that climate change related risks in the long and short term that are addressed. Also that the full costs of data center electricity and water use are internalized by these centers, and are not passed on to other consumers.

The failure to follow this approach risks authorizing developments that could adversely impact on several fundamental rights including the right to environment and the right of access to water. In many parts of the country communities are already struggling to get access to water, poorly maintained infrastructure is resulting in significant water losses and the cost of addressing these deficiencies poses a serious burden on the state. The breakdown in services dependent on water such as sewerage services is already adversely affecting the environmental rights of many communities. These hardships stand to be exacerbated if there is a failure to properly regulate data centers and the state is under a constitutional duty to take the necessary steps to prevent this from happening.

²⁸ National Environmental Management Act principle as set out in section 2(4)(a)(vii)