PARALLEL COALITION REPORT AND SUBMISSION ON THE LIST OF ISSUES BY THE ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC), MEDIA MONITORING AFRICA (MMA), AND THE RIGHT2KNOW CAMPAIGN (R2K)

PREPARED FOR THE 61st SESSION (9-13 OCTOBER 2017) OF THE PRE-SESSIONAL WORKING GROUP OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN RESPONSE TO THE GOVERNMENT OF SOUTH AFRICA'S INITIAL REPORT DATED 25 APRIL 2017

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ABBREVIATIONS AND ACRONYMS

APC	Association for Progressive Communications
CESCR	Committee on Economic, Social, and Cultural Rights
DTPS	Department of Telecommunications and Postal Services
ESCRs	Economic, social and cultural rights
FLOSS	Free/libre and open source software
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTs	Information Communications Technologies
ISPs	Internet Service Providers
LOIs	List of Issues
MMA	Media Monitoring Africa
NDP	National Development Plan 2030
PSWG	Pre-Sessional Working Group
R2K	Right2Know Campaign
South Africa Connect	South African Connect: Creating Opportunities, Ensuring Inclusion (South Africa's Broadband Policy), 20 November 2013

I.   INTRODUCTION

The Association for Progressive Communications (APC), Media Monitoring Africa (MMA) and the Right2Know Campaign (R2K) welcome the opportunity to submit this parallel coalition report and submission on the List of Issues (LOIs) to the 61st session (9-13 October 2017) of the Pre-Sessional Working Group (PSWG) of the Committee on Economic, Social, and Cultural Rights (CESCR). This parallel report is submitted in response to the Government of South Africa's Initial Report to the CESCR dated 25 April 2017, and distributed on 7 June 2017.[1]

APC is both a network and a non-profit organisation. APC members are groups and individuals working in their own countries to advance APC's mission to empower and support organisations, social movements and individuals, in and through the use of information and communication technologies (ICTs), to build strategic communities and initiatives for the purpose of making meaningful contributions to equitable human development, social justice, participatory political processes and environmental sustainability. As of August 2017, APC has 56 organisational members and 29 individual members active in 75 countries.[2]

MMA is a non-profit organisation -- with over 20 years of experience in media monitoring and direct engagement with media, civil society organisations and citizens in South Africa -- that promotes democracy and a culture where media and the powerful respect human rights and encourage a just and fair society. MMA acts in a watchdog role to promote ethical and fair journalism that supports human rights. MMA's vision is a just and fair society empowered by a free, responsible and quality media.[3] MMA is also responsible for Shika Moto, a network that uses wi-fi to allow users to share messages, files and pictures for free through an application.

R2K is a broad-based, grassroots campaign formed to champion and defend information rights and promote the free flow of information in South Africa. Through its work, R2K seeks to strengthen and unite citizens to raise public awareness, mobilise communities and undertake research and targeted advocacy that aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs and live free from want, in equality and in dignity.[4]

This report focuses primarily on access to the internet in South Africa – particularly for disadvantaged and marginalised persons and groups, including those living in rural and remote areas – and the extent to which the Government of South Africa is ensuring that people are able to benefit from the potential of the internet as an enabler of economic, social and cultural rights (ESCRs). Accordingly, this submission

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[1] The coalition acknowledges the invaluable work of the Applied Law & Technology (Pty) Ltd in compiling the submission.

[2] For more information about APC, see: https://www.apc.org/

[3] For more information about MMA, see: http://www.mediamonitoringafrica.org/

[4] For more information about R2K, see: http://www.r2k.org.za/

includes questions to be considered in compiling the LOIs in relation to articles 3, 6, 12, 13, 14 and 15 of the ICESCR.

II. GENERAL INFORMATION RELATING TO THE POTENTIAL OF THE INTERNET AS AN ENABLER OF ESCRs

As a point of departure, we recall the recent 2016 Resolution of the United Nations Human Rights Council which recognises that the internet is a driving force in accelerating progress towards development in various forms.[5] The Resolution draws the link between access to the internet and ESCRs, in particular the right to education, noting in its preamble that "access to information on the Internet facilitates vast opportunities for affordable and inclusive education globally, thereby being an important tool to facilitate the promotion of the right to education, while underlining the need to address digital literacy and the digital divide, as it affects the enjoyment of the right to education", and further that "quality education plays a decisive role in development, and therefore calls upon all States to promote digital literacy and to facilitate access to information on the Internet, which can be an important tool in facilitating the promotion of the right to education".[6]

Furthermore, the APC network has written extensively on the potential of the internet as an enabler of rights, including ESCRs.[7] In particular, APC advocates for a rights-based approach to internet policy and governance that advances ECSRs, and takes the view that discussions on internet rights should not be limited to civil and political rights, but should also consider ways to advance ESCRs. Accordingly, government commitments to promote and protect human rights online applies to ESCRs.[8]

Seven key considerations on how the internet can enable ESCRs

While APC continues to research how the internet can enable ESCRs, it has compiled seven key considerations to develop the discussion on how the internet impacts on the

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5 United Nations Human Rights Council Resolution 32/13 (18 July 2016), A/HRC/RES/32/13. ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13.

6 *Id* at para 4.

7 See, for example, Association for Progressive Communications and International Development Research Centre, *Global Information Society Watch 2016: Economic, social and cultural rights and the internet* (10th Ed.): https://www.giswatch.org/sites/default/files/Giswatch2016_web.pdf and Association for Progressive Communications, *Connecting your rights: Economic, social and cultural rights and the internet*: https://www.apc.org/en/projects/internet-rights-are-economic-social-cultural-rights. See, also, Juan Carlos Lara, *Internet access and social, economic and cultural rights*, Association for Progressive Communications and Derechos Digitales (September 2015): https://www.apc.org/sites/default/files/APC_ESCR_Access_Juan%20Carlos %20Lara_September2015%20%281%29_0.pdf

8 United Nations Human Rights Council Resolution, RES/32/13 at para 1.

realisation of ESCRs.[9] These seven key considerations serve as a starting point against which South Africa's Broadband Policies, among others, can be read.

The internet is an enabler of ESCRs. While access to the internet may not as yet currently be recognised as a self-standing human rights in itself (with a few exceptions, such as Finland and the Indian state of Kerala), the internet can act as a significant enabler of ESCRs. Although most closely associated with the right to freedom of expression, the internet can impact positively on most rights in the ICESCR.[10]

The internet creates new forms of exchange that have implications for existing ESCRs. The global proliferation of the internet, including in South Africa, has resulted in new manifestations of economic, social and cultural interactions and exchanges, including, for example, the availability of new internet-based markets for small-scale producers of cultural and other goods.[11]

The internet can have a negative impact on ESCRs. In certain circumstances, the internet and new technologies can be a disabler of ESCRs, or even facilitate the violation of rights. By way of an example, a poorly managed programme such as an e-education initiative may suffer from inadequate teacher training and a lack of technical support resulting in a decline in the quality of education.[12]

The internet empowers individuals and groups differently. While it was anticipated that increased internet penetration would close the poverty gap or "digital divide", evidence indicates that the gap between the rich and the poor has increased. Accordingly, significant gaps in affordable and high-quality access to the internet for reasons of income, education, gender, language, geographic location, and other economic, social and cultural factors remain a pressing concern in the context of leveraging its potential to enable ESCRs.[13] In particular social groups with more social connections and education than others can take greater advantage of the opportunities afforded by the internet even when there is increased access.

Open systems can best secure ESCRs. The internet can enable communities and groups to exercise their own ESCRs, sometimes in the absence of interventions from states. As a result, APC takes the view that open internet architectures, based on free/libre and open source software (FLOSS), are likely to best enable these

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9 See Alan Finlay and Deborah Brown, *Key Considerations: Economic, social and cultural rights and the internet* in Association for Progressive Communications and International Development Research Centre, *Global Information Society Watch 2016: Economic, social and cultural rights and the internet* (10th Ed.): https://www.giswatch.org/sites/default/files/Giswatch2016_web.pdf at pages 13-8.

10 *Id* at page 14.

11 *Id.*

12 *Id* at page 15.

13 *Id* at page 16.

forms of citizen empowerment.[14] In developing countries the state often controls the largest procurement budgets for internet technologies, this gives states an opportunity to use procurement policy to support open systems.

Open content promotes education, participation in cultural life and the enjoyment of scientific progress. It is generally accepted that open content – or content freely accessible online – stimulates scientific enquiry, and encourages education and cultural exchange.[15] Once again state procurement policy can be decisive in ensuring that tax payer funded content is open.

The private sector plays a critical role in the provision of internet services for ESCRs. Because much of the internet is currently owned and managed by the private sector, intermediaries like search engines, internet service providers (ISPs) and content providers can play an influential role in how ESCRs are exercised online. They can limit and restrict both access to the internet and access to specific content, and in this way limit public participation and the full ability of the internet to enable ESCRs. It is therefore important that internet intermediaries adhere to their responsibility to respect human rights, for instance as outlined by the United Nations Guiding Principles on Business and Human Rights.[16]

South Africa's Broadband Policies

In recent times, the Government of South Africa has developed a series of policies relating to internet access and the progressive realisation of ESCRs, directly and indirectly acknowledging the internet as an enabler of ESCRs; none of which are reflected in South Africa's Initial Report which, notably, does not once mention the "internet". The three policies, dealt with in turn below, are:

South Africa Connect: Creating Opportunities, Ensuring Inclusion (South Africa Connect), published by the Department of Communications on 20 November 2013;[17]

The National Integrated ICT Policy White Paper 2016 (ICT Policy White Paper), published by the Department of Telecommunications and Postal Services (DTPS) on 28 September 2016;[18] and

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14 *Id.*

15 *Id* at page 17.

16 *Id.*

17 See Department of Communications, *South African Connect: Creating Opportunities, Ensuring Inclusion* (South Africa's Broadband Policy), 20 November 2013: https://www.dtps.gov.za/index.php?option=com_phocadownload&view=category&download=90:broadband-policy-gg37119&id=21:broadband&Itemid=333

18 Department of Telecommunications and Postal Services, *National Integrated ICT Policy White Paper* (28 September 2016): https://www.dtps.gov.za/images/phocagallery/Popular_Topic_Pictures/National_Integrated_ICT_Policy_White.pdf

The National e-Government Strategy and Roadmap, published by the DTPS on 7 April 2017.[19]

South Africa Connect

In order to give expression to South Africa's vision in the National Development Plan 2030 (NDP)[20] "of a seamless information infrastructure by 2030 that will underpin a dynamic and connected vibrant information society and a knowledge economy that is more inclusive, equitable and prosperous,"[21] South Africa Connect, published by the Government of South Africa on 20 November 2013, envisages "a widespread communication system that will be universally accessible across the country at a cost and quality that meets the communication of citizens, business and the public sector and provides access to the creation and consumption of a wide range of converged applications and services required for effective economic and social participation".[22]

South Africa Connect has a four-pronged strategy: digital readiness; digital development; digital future; and digital opportunity.[23] Under the discussion on the second of the four prongs, digital development, the policy outlines the following five requirements to serve as part of the digital development strategy of the policy:[24]

An expanded public service network that will provide high speed broadband connectivity to administrative and other facilities;

Dedicated connectivity for all schools to be used by teachers, learners, administrators and other support staff for administrative, teaching and learning purposes;

Dedicated connectivity for all public health care facilities, and greater digitisation of the health care system;

Enabling communities to solve their own connectivity problems through the development of regulation supporting cooperatives, the promotion of import tax breaks for non-profit organisations and open access to the national backbone;

Free public wi-fi to be made available at all public points reached by the public sector networks. As noted in the policy: "This will stimulate demand by allowing

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19 Department of Telecommunications and Postal Services, *National e-Government Strategy and Roadmap* (7 April 2017): http://www.gov.za/sites/www.gov.za/files/40772_gon341.pdf
20 See the National Development Plan 2030: http://www.poa.gov.za/news/Documents/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf
21 See above n 15 at page 2.
22 *Id.*
23 *Id* at pages 30-31.
24 *Id* at pages 38-39.

people to access the internet, including government services. Mechanisms will be explored to support and encourage municipalities to establish municipal-wide free [wi-fi] networks aimed at enabling access, and innovation".

In seeking to meet its stated objectives, South Africa Connect set the following National Broadband Policy Targets,[25] to be reviewed annually, derived from "consideration of existing baselines and benchmarking against the kind of targets being set in other countries":[26]

Target	Penetration measure	Baseline (2013)	By 2016	By 2020	By 2030
Broadband access in mbps user experience	% of population	33.7% 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%	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 5 **mbps**	100% at 10 **mbps**	100% at 100 **mbps**

ICT Policy White Paper

Alongside South Africa Connect, the ICT Policy White Paper was published in September 2016, with a view to provide the overarching policy framework for the transformation of South Africa to an inclusive and innovative digital and knowledge society.[27] It draws a direct link between the provision of ICTs and the demands of the Constitution, noting in its introduction, with reference to the Preamble of the Constitution, that it is premised on "furthering the constitutional objective of improving 'the quality of life of all citizens' and freeing 'the potential of each person'". It further emphasises the interplay between access to the internet and the constitutional right to equality."[28]

The ICT Policy White Paper identifies one of its overall objectives as being "broadband for all", with its objective relating to accessibility providing that "[s]ervices, devices,

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25 *Id* at pages 18-9.

26 *Id* at page 18.

27 See above n 16 at page 3.

28 *Id* at page 1.

infrastructure and content must be accessible for all sectors of the population, including persons with disabilities, so that all can equally enjoy and benefit from communication services". Accessibility is interpreted in the ICT Policy White Paper as "the ability of all people to use and access services regardless of education, disability, age, gender etc".[29]

National e-Government Strategy and Roadmap

Most recently, in April 2017, the National e-Government Strategy and Roadmap was published for public comment in terms of South Africa's Electronic Communications and Transactions Act.[30] As noted therein, "e-Government provides an opportunity to use ICTs for promoting greater accountability of the government, increase efficiency and cost-effectiveness and create greater constituency participation".[31] It has not, as yet, been adopted by the South African Cabinet.

Specific questions to be addressed in the LOIs

- **Question 1: Please provide information on the specific measures taken to implement the digital development strategy in terms of South Africa Connect, particularly in relation to the progressive realisation of ESCRs.**

- **Question 2: Please provide information on the extent to which each of the 2016 National Broadband Policy Targets detailed in South Africa Connect have been met, particularly in relation to those living in rural and remote areas, women, minority groups, the elderly, persons with disabilities, and in relation to education and healthcare (particularly public education and healthcare facilities). This should include addressing how the cost of access (not just speed) is being addressed to ensure the equal participation of all citizens.**

  Question 3: Please provide further information on the measures taken to meet the 2020 and 2030 National Broadband Policy Targets detailed in South Africa Connect.

III.   INFORMATION RELATING TO THE INTERNET AND RELEVANT ESCRs

Article 3: Equal enjoyment

In South Africa Connect, the Government of South Africa recognises that "[t]here is now considerable evidence to demonstrate the inequality of access and use of ICTs and the ability to deploy them to their full potential lies in the unequal capabilities of

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29 *Id* at page 132.

30 See section 5(4) of Act 25 of 2002: http://www.gov.za/documents/electronic-communications-and-transactions-act

31 See above n 17 at page 13.

individuals and groups such as those living in rural areas, women, the elderly and persons with disabilities."[32]

South Africa Connect further recognises that "[a]s ICTs become more complex the ability to optimise their use correlates strongly with education and income. Those marginalised from education and therefore employment and income are most likely to be marginalised from the type of communications services required to participate meaningfully in a modern economy and society."[33]

The ICT Policy White Paper, in proposing the development of a Wireless Open Access Network, states as a principle that there will be "[e]ffective participation by targeted groups including women, youth and persons with disabilities."[34]

Specific questions to be addressed in the LOIs

> **Question 4: Please provide information on the measures taken to ensure universal and affordable access to the internet, especially by disadvantaged and marginalised individuals and groups, as well as in rural and remote areas.[35]**

> **Question 5: Please provide information of any existing or planned policies and programmes aimed at ensuring equitable internet access between men and women, and boys and girls, including e-education policies, public access facilities, local content and applications provision, and, where possible, information and / or statistics on whether these policies are reaching their target audiences.**

> **Question 6: Please provide information on the measures taken to facilitate public participation in the drafting of existing or planned policies by those living in poverty, rural and remote areas, women, minority groups, the elderly and persons with disabilities.**

Article 6: The right to work

There is no designated right to work in the Constitution. However, section 22 of the Constitution does provide for a right of every citizen to choose their trade, occupation and profession freely. Two of the key ways in which access to the internet implicates the right to work include by enabling job-seekers the opportunity to search for vacancies through online job platforms; and to enable entrepreneurs to exploit the benefits of having access to the commercial online market.

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32 See above n 15 at pages 24 and 45.

33 *Id* at pages 45-6.

34 Above n 16 at page 76.

35 See, for example, Item 36 on the *List of issues in relation to the sixth periodic report of the Russian Federation,* E/C.12/RUS/Q/6, 9 March 2017.

Moreover, this is closely linked with the need for digital literacy, both to make use of online platforms for the reasons identified above, as well as to be competitive in the job market when applying jobs, many of which will require applicants to have at least basic digital literacy skills.

The State Report of the Government of South Africa sets out the initiatives being taken to address unemployment in South Africa, whilst acknowledging that this remains a significant challenge in the country. However, no information is provided in relation to the steps being taken to facilitate access to the employment market, including access to relevant information.

Specific questions to be addressed in the LOIs

> **Question 7: Please provide information on the measures being taken to ensure that citizens have access to relevant information regarding employment opportunities South Africa, in particular access to online platforms.**

> **Question 8: Please provide information on programmes to ensure that unemployed South African, particularly those in rural and remote areas, are provided with digital literacy training.**

Article 12, 13 and 14: The right to healthcare and education

In South Africa Connect, the Government of South Africa prioritises health and education in its digital development strategy. In relation to health, South Africa Connect states that that "dedicated connectivity for all public health care facilities is not only a requirement for implementation of the National Health Insurance but will generate efficiencies such as faster patient diagnoses, reduced medical errors, etc."[36]

In relation to education, South Africa Connect goes further stating:

> "dedicated connectivity for all schools to be used by teachers, learners, school administrators and other support staff for administrative and teaching and learning purposes, is aimed at harnessing the vast potential that broadband has to:
>
> extend access to educational opportunities regardless of gender, geographic location, socio-economic or ethnic background, illness or disability, or any other circumstance that would normally hinder access;
> enable flexible, open learning environments which enable contextual, real-time, interactive and personalised learning;

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36 Above n 15 at page 39.

> extend learning beyond the formal school environment enabling learning beyond traditional classrooms; and
>
> make education systems more efficient by helping teachers and administrators streamline routine tasks and improve assessment and data collection".[37]

However, at the same time, there is no effort to ensure that there is open access to publicly-funded textbooks, and for them to be shared and used via the internet.[38]

Specific questions to be addressed in the LOIs

Question 9: **Please provide information on any existing or planned e-health and e-education policies, content and applications in South Africa and, where possible, information and / or statistics on whether these policies are reaching their target audiences.**

Question 10: **Please provide further information on measures taken to implement the digital development strategy particularly in relation to those living in poverty, rural and remote areas, women, the elderly and persons with disabilities.**

Question 11: **Please provide specific information on the following: (i) the number of healthcare facilities that have access to the internet, and (ii) the number of education facilities that have access to the internet. Please indicate further whether these are public or private facilities, and whether they fall in urban, peri-urban or rural and remote areas.**

Article 15: The right to take part in cultural life and to enjoy the benefits of scientific progress

In relation to article 15(1)(a) of the ICESCR, South Africa Connect states in relevant part that "[d]digital inclusion extends beyond the rollout of networks, and is in many ways dependent on the availability of relevant content for local users".[39] This includes seeking to encourage the development of local content, promoting demand for local digital content, and enhancing access to local content and diversity of content.[40] It is imperative that, in meeting these objectives, due regard is had to the right to take part in cultural life, and content that is relevant and appropriate for minority groups as well.

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37 *Id* at page 38.

38 This lack of coordination of government policy can be illustrated through, for example, the draft National Policy for the Provision and Management of Learning and Teaching Support Material (LTSM): http://www.education.gov.za/Portals/0/Documents/Policies/Draft_%20LTSM%20Policy%20for%20Public%20Comments%202014).pdf?ver=2015-01-29-170953-293

39 Above n 16 at page 51.

40 *Id*.

Access to the internet not only enables different cultural groups, including minority groups, to exercise their rights to freedom of expression and cultural identity, but also enables such groups to associate and collectively develop their cultural identity and sense of belonging.

In relation to article 15(1)(b) of the ICESCR, it is noted that a number of initiatives to mobilise technological innovation for economic growth and the and the quality of life of all South Africans are detailed in South Africa Connect.[41] However, limited reference is made to older persons and disadvantaged an marginalised groups.

As has been noted by the United Nations Special Rapporteur in the Field of Cultural Rights, science must be understood as knowledge that is "testable and refutable, in all fields of inquiry, including social sciences, and encompassing all research.[42] Furthermore, the right to benefit from scientific progress and its applications includes, amongst other things, access to the benefits of science by everyone, without discrimination,[43] and should be free of constraint. It is therefore of concern that Intellectual Property Rights from Publicly Financed Research and Development Act[44] places restrictions on public access to certain categories of publicly-funded research

Specific questions to be addressed in the LOIs

> **Question 12: Please provide information on measures taken to develop and promote access to local content online, particularly local content relevant to cultural minorities.**

> **Question 13: Please provide information on the measures taken to facilitate the use of the internet by cultural minorities, older persons and disadvantaged and marginalised groups.[45]**

> **Question 14: Please provide information about the measures being taken by government public information freely available to the public, for instance through providing access to publicly-funded research and other information of economic value to citizens (such as land registration data) in open data formats, and zero-rating government websites.**

IV.   CONCLUSION

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41 Above n 15 at page 47.

42 Report of the Special Rapporteur in the Field of Cultural Rights, *The right to enjoy the benefits of scientific progress and its applications*, A/HRC/20/26, 14 May 2012 at para 24.

43 *Id* at para 25.

44 Act 51 of 2008: http://www.dst.gov.za/index.php/nipmo2/legislation-nipmo/2-ipr-act/file

45 See, for example, Item 36 of the *List of issues in relation to the fourth periodic report of the Republic of Korea*, E/C.12/KOR/Q/4, 16 March 2016.

South African digital inclusion policies are undercut by unclear overlapping obligations and mandates, broad policy incoherence, legislation that limits access to knowledge, procurement policies that prevents public access to publicly funded resources, and increasingly burdensome requirements on Internet Service Providers.

Broadband targets are only based on speed of access and do not take into account the cost of access, a factor which is more important than speed in causing inequalities in access levels among the population.

APC, MMA and R2K respectfully request that these submissions be considered, and included in the LOIs, and that, jointly, APC, MMA and R2K are invited by the PSWG of the CESCR to participate in the 61st Pre-Sessional Working Group from 9-13 October 2017.