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**TO: United Nations Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression**
Email: freedex@ohchr.org

SUBMISSION BY MEDIA MONITORING AFRICA:

DISINFORMATION REPORT

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INTRODUCTION

1. Media Monitoring Africa (MMA) welcomes the opportunity to provide this submission to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in order to assist in the preparation of the Special Rapporteur's annual thematic report to be presented to the Human Rights Council at its 47th session in June 2021.
2. We note that the notion of disseminating false or inaccurate content is not a new concept but has indeed gained traction in recent years with increased discourse around "fake news", sophisticated disinformation campaigns and a declining public trust in traditional journalism. We are seeing how social media platforms present unique challenges regarding the dissemination and publication of information online. As of late, we have seen online disinformation dismantle the fairness and credibility of elections in several countries around the world, threatening democratic political and policy-making processes. We are presently presented with innumerable challenges concerning disinformation amidst the current global health crisis. We are also seeing a concerning trend in the Southern African region regarding the criminalisation of disinformation. Given the relevance and impact of disinformation, worrying trends, and the current complicated context within which the world finds itself, it is apposite that the Special Rapporteur is seeking to address these issues now.
3. In response to the questions posed by the Special Rapporteur we have structured our submissions as follows:
 - 3.1. **First**, we give a brief overview of MMA.
 - 3.2. **Second**, we provide our reflections on key challenges raised by disinformation.
 - 3.3. **Third**, we highlight measures to address key challenges.
 - 3.4. **Fourth**, we touch on potentially harmful measures.
 - 3.5. **Fifth**, we provide some recommendations on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.

OVERVIEW OF MEDIA MONITORING AFRICA

4. MMA is a not-for-profit organisation that has been monitoring the media since 1993. MMA's objectives are to promote the development of a free, fair, ethical, and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom. MMA has over 20 years of experience in media monitoring and direct engagement with media, civil society organisations, state institutions and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.
5. MMA has also played an active role in addressing disinformation in South Africa. In 2019, MMA, and the South African Independent Electoral Commission (IEC) launched [Real411](#), a Digital Disinformation Complaints platform geared to govern and engage on the issue of

disinformation during the national election period. In March 2020, MMA launched the next iteration of the Real411, which has expanded the scope of the platform to deal with disinformation, hate speech, incitement to violence, and the harassment of journalists. For more information, please visit real411.org.za.

6. MMA has also been involved in litigation around disinformation. In a case that involves a defamatory Tweet, MMA argued that when disinformation is also defamatory it is important to strike the appropriate balance between the right to freedom of expression and the rights to dignity and reputation, all while addressing the threat of disinformation.¹ MMA is also involved in a matter in which it has raised concerns about a TV interview which we argue is a clear example of disinformation pertaining to the COVID19 pandemic.²
7. For more information about MMA, please visit: mediamonitoringafrica.org.

KEY CHALLENGES RAISED BY DISINFORMATION

8. MMA submits that disinformation may have far-reaching consequences, cause public harm, be a threat to democratic political and policy-making processes, and may even put the protection of the public's health, security and environment at risk. Disinformation erodes trust in institutions, as well as in the media, and harms democracy by hampering the ability of the public to take informed decisions. It can polarise debates, create or deepen tensions in society, undermine electoral processes, and impair freedom of opinion and expression.³ In addition to these concerns — which are by now well established — there are some further practical challenges we wish to highlight.

Legislating / criminalising disinformation: old approaches to new problems

9. MMA notes a concerning trend in the Southern African region regarding political commentary around the criminalisation of disinformation. In August 2020, the Heads of State of the Southern African Development Community (SADC) held its 40th Ordinary Summit during which it was resolved that member states are urged to “take pro-active measures to mitigate against external interference, the impact of fake news and the abuse of social media, especially in electoral processes”.⁴ In South Africa, there have been shifting attitudes of the South African Police Services (SAPS) regarding disinformation. Some members of SAPS have noted that the publication, distribution, disclosure, transmission, circulation or spreading of false information or fake news is an offence,⁵ whereas others

¹ For further details on this matter see 'MMA Amicus Curiae Heads of Argument in EFF v Trevor Manuel case' (accessible at <https://mediamonitoringafrica.org/cases-and-outcomes/>). See further *Economic Freedom Fighters and Others v Manuel* [2020] ZASCA 172 (accessible at <http://www.saflii.org/za/cases/ZASCA/2020/172.html>). This matter is being appealed to the Constitutional Court.

² For further details on this matter see 'MMA complaint to the BCCSA' and 'BCCSA – final tribunal judgment MMA v eNCA & eTV' (accessible at <https://mediamonitoringafrica.org/cases-and-outcomes/>).

³ Joint Declaration on Freedom of Expression and 'Fake News', Disinformation and Propaganda (2017). This was published by the Special Rapporteur on Freedom of Opinion and Expression of the United Nations, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, the Special Rapporteur on Freedom of Expression of the Organization of American States, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights.

⁴ Communique of 40th Ordinary Summit Heads of State of the Southern African Development Community (SADC), (17 August 2020) (accessible at https://www.sadc.int/files/8115/9767/2537/Communique_of_the_40th_SADC_Summit_August_2020_-ENGLISH.pdf)

⁵ South African Police Service, 'Media Statement: 17 September 2020' (accessible at <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=28349>).

cautioned the public against the incessant promotion and distribution of malicious untruths that seek to sow panic and pandemonium amongst communities.⁶ There have further been concerning developments in Zambia and Zimbabwe.⁷

10. MMA is concerned about the above developments, noting that in these contexts criminalising disinformation is more likely to be an attempt to silence dissent. We submit that old approaches to new problems do not work - using legislation and regulation to combat the issue does not always address the issue.
11. We note three key problems. First, efforts to legislate tend to be used to limit more than disinformation but cater, intentionally or unintentionally, to greater incursions on freedom of expression, arguably making the problem worse. Secondly, legislation is often slow, and in most instances seeks to punish or deal with offenders who transgress the law. It is not always catered at addressing systemic issues such as access to information and media and information literacy. Thirdly, and most importantly, the problem is bigger than any single government, and while states have a critical role to play, they alone are unlikely to meaningfully address the core issues. A multi-stakeholder and multi-disciplinary approach is likely to be more effective. One which includes the state, regional and international bodies, social media platforms, the media, and civil society.

State security issues: shifting to the shadows

12. Because it is referred to now and understood to be a weapon of choice not just by conspiracy theorists, but also as a strategic weapon used by a foreign power for influence, it means that there is a real danger of disinformation being seen mostly as a state security issue, and less a threat to democracy as a whole. The problem with this of course is that the moment issues like these are perceived in such terms they tend to become the purview of state security agencies, which regardless of the state, always seek to act in the shadows and limit access to information.
13. This is not to suggest that disinformation campaigns are not necessarily threats to state security and agency. The impact of it being a state security issue more than a democratic one impacts the approach to responses to it. It has a further impact on who is involved in addressing it. Seen as a threat to state security it is likely to be addressed behind closed doors, with threats and real likelihood of criminal sanctions, as opposed to balancing freedom of expression, and developing a culture of human rights.

⁶ South African Police Service, 'Media Statement: 23 September 2020' (accessible at <https://www.saps.gov.za/newsroom/selnewsdetails.php?nid=28467>).

⁷ Since February 2020 there have been increasing utterances by various officials regarding a clampdown on the dissemination of disinformation in Zambia. More recent statements and actions have indicated an intention by Zambian authorities to legislate against the dissemination and propagation of disinformation, particularly across social media platforms. In March 2020, the Minister of Transport and Communication, stated that the Zambian government intends to legislate against the creation and propagation of fake news, noting that fake news is dangerous and threatens the country's development. In order to "bring sanity in the usage of the cyberspace", the Minister proposed that he should sign a statutory instrument "which will prohibit the generation of fake news as well as its circulation". Towards the end of October 2020, Zimbabwe's cabinet approved the proposed amendments to the Criminal Law Codification and Reform Act which would make it a crime for activists to make "unsubstantiated claims" of human rights abuses and criminalise "the unauthorised communication or negotiation by private citizens with foreign governments".

Disinformation on social media: priorities, anonymity, and networks

14. While there are a plethora of challenges in relation to disinformation and social media, MMA seeks to highlight three.
15. The first relates to the unprecedented power of social media platforms, and their priorities and profits. The rise of social media platforms and their concomitant power means that despite efforts they have been making to combat disinformation, as multinational behemoth corporations their interests and priorities are likely to be predominantly profit-driven, rather than focused on deepening democracy. Large and small nations alike are struggling to hold them accountable. If the social media platforms are to contribute meaningfully towards addressing disinformation then greater transparency and accountability is needed as we grapple with complicated questions around content moderation and algorithmic concerns.
16. The second relates to the challenges around tracking, identifying, and quantifying the prevalence of disinformation on social media. One of the strengths of the internet is that it enables people to have varying levels of privacy. This is good where it enables people to express their views freely and potentially expose wrongdoing, but it can be unhelpful when seeking to identify and act against those who are spreading disinformation. Further, the generally opaque nature of the platforms themselves makes tracking disinformation difficult, so while there are some notable efforts, it is incredibly challenging to identify the scale and prevalence of the issue.
17. The third relates to the role of networks in the dissemination of disinformation. MMA notes with concern the prevalence of groups or forums that perpetuate the dissemination of disinformation and harmful content. These echo chambers pose significant challenges to combatting disinformation, and are, along with the assistance of algorithms that allow content to surface and resurface, creating challenges when identifying root causes.⁸

MEASURES TO ADDRESS KEY CHALLENGES

18. MMA submits that there are no easy solutions to the challenge disinformation poses. There is no vaccine. Solutions require multifaceted, multistakeholder approaches that empower the public, hold platforms accountable and enable the state to act in their best interests. Below we have highlighted some measures that may be of interest to the Special Rapporteur.

African Commission on Human and Peoples' Rights

19. As the Special Rapporteur is no doubt aware, in 2017, the Joint Declaration on Freedom of Expression and 'Fake News', Disinformation and Propaganda (Joint Declaration) was issued by the ACHPR Special Rapporteur on Freedom of Expression and Access to Information,

⁸ See Centre for Analytics & Behavioral Change, 'Interim report on Xenophobia on South African Social Media' (2020) (accessible at <https://www.cabc.org.za/reports/2020-09-04-interim-report-on-xenophobia-on-south-african-social-media/>). See further, Bird and Smith, 'Disinformation in a time of Covid-19: Weekly Trends in South Africa' *Dailey Maverick* (28 September 2020) (accessible at <https://www.dailymaverick.co.za/article/2020-09-28-disinformation-in-a-time-of-covid-19-weekly-trends-in-south-africa-11/>); Bird and Smith, 'Disinformation in a time of Covid-19: Weekly Trends in South Africa' *Dailey Maverick* (4 October 2020) (accessible at <https://www.dailymaverick.co.za/article/2020-10-04-disinformation-in-a-time-of-covid-19-weekly-trends-in-south-africa-12/>).

together with the United Nations Special Rapporteur for Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media and the Organisation of American States Special Rapporteur on Freedom of Expression.⁹ MMA submits that there are three key principles that can be distilled from the Joint Declaration. First, proposals to address disinformation should avoid offering general prohibitions on speech as solutions, as this is unlikely to meet the test for a justifiable limitation of the right to freedom of expression. Second, state actors should not make, sponsor, encourage or disseminate disinformation or propaganda. Third, in addition to not disseminating disinformation or propaganda, state actors should also take positive steps to disseminate reliable and trustworthy information, including on matters of public interest.

20. MMA further references the ACHPR's Guidelines on Access to Information and Elections in Africa¹⁰ (ACHPR Guidelines). It provides guidance in relation to various stakeholders in the electoral process, including the media and online platform providers.

Responses in other jurisdictions

21. In addition to regional responses, a number of countries around the world have begun taking measures to address the dissemination of disinformation. Poynter provides a useful resource, setting out a list of these countries and the measures being imposed to address disinformation.¹¹ These provide some insight into the array of measures being contemplated, including dedicated laws on disinformation during election periods, the establishment of dedicated units, online portals and public education campaigns. Notably, however, these are rapidly evolving, and care and caution should be exercised in ensuring that any information relied on is up-to-date and accurate. In June 2020, the Global Partners Digital, ARTICLE 19, the Collaboration on International ICT Policy for East and Southern Africa (CIPESA), PROTEGE QV and the Center for Human Rights, University of Pretoria, jointly launched an interactive map to track and analyse disinformation laws, policies, and patterns of enforcement across Sub-Saharan Africa.¹² This is a useful tool for gauging trends in state responses to disinformation across the region.

Real411

22. As mentioned above, MMA has worked on developing an online complaints portal – 'the Real411' to allow members of the public to report concerns of disinformation being disseminated via online platforms.¹³ Members of the public can submit relevant complaints to the Digital Complaints Committee (DCC). Complaints may be submitted by any member of the public to be considered by the DCC. The DCC will act expeditiously, in light of the particular circumstances, to appropriately address complaints received. English is the working language of the DCC, but complaints will be received in the eleven official languages

⁹ Accessible at <https://www.osce.org/fom/302796?download=true>.

¹⁰ Accessible at http://www.achpr.org/files/special-mechanisms/freedom-of-expression/guidelines_on_access_to_information_and_elections_in_africa_eng.pdf.

¹¹ Poynter, 'A guide to anti-misinformation actions around the world', undated, accessible at <https://www.poynter.org/ifcn/anti-misinformation-actions/>.

¹² Accessible at <https://www.disinformationtracker.org/>.

¹³ Accessible at <https://www.real411.org/learn>.

of South Africa, and will seek to establish translation capabilities to address all complaints received. Complaints may not be submitted anonymously, but the identity of the complainant will be kept confidential. Appropriate technical and legal measures will be established to safeguard all personal data of the complainant and to protect the confidentiality of the complainant in the outcome.

23. Complainants will be requested to provide as much relevant information as possible via the online complaints portal to facilitate the work of the DCC. On receipt of a complaint, the Secretariat will forward the complaint to a Sub-committee to make a decision.¹⁴ The outcomes of complaints are made publicly accessible, and the complainant is notified accordingly. We have been updating, monitoring and evaluating the progress of Real411, and to date have received over 1200 complaints.¹⁵ We submit that user-friendly platforms such as the Real411 can play an important and meaningful role in the fight against disinformation. Not only does the system have the benefit of ensuring that action against content can be taken, but that the content is assessed according to the same criteria regardless of the platform. In addition, Real411 also helps empower the public to take action.

Padre

24. Padre, is an online political advertisement repository where political parties were invited to upload their official political advertisements. The purpose of the repository was to assist the media and members of the public to ascertain the real political advertisements from any altered false advertisements that may be circulated with an intention to disparage the party in question.¹⁶ The basis for the political advertising repository was derived from the ACHPR Guidelines, which underscore the importance of transparency and accountability in electoral processes, and the role that this can play in the overall credibility of the elections. During the complaints process, several complaints were received of altered political party advertisements that were circulated on social media. While some were clearly satirical, others raised concerns of being so similar that it could be misconstrued for an official party advertisement and consequently be disparaging to the party. This highlights the utility of such a repository if it were possible to verify the authenticity of the advertisement.

Research, and media and information literacy

25. During the 2019 national government elections the Real411 and Padre initiatives were complemented by media and information literacy campaigns, run through workshops, radio advertisements and the development of training manuals, to raise awareness about the initiatives and the challenges that were being addressed. For example, MMA

¹⁴ Possible decisions that a Sub-committee may make include the following: The complaint falls outside the scope of the DCC; no action is required; the complaint should be referred to the Press Ombud for consideration; the complaint should be referred to the South African Human Rights Commission (SAHRC) and/or any other independent statutory body for assistance; the complaint should be referred to the SAPS for further investigation; assistance should be sought from the relevant online platforms; a case should be instituted with the Equality Court or any other appropriate court or tribunal; and/or a counter-narrative should be published. In the event that the Sub-committee does not reach an agreement in the proposed possible courses of action, the Secretariat may refer the complaint to the Appeals Committee for resolution. Any party aggrieved by a decision made by a Sub-committee of the DCC may approach the Secretariat in writing to lodge an appeal with the Appeals Committee.

¹⁵ We file weekly reports on 'Disinformation in a time of Covid-19: Weekly trends in South Africa' these can be accessed here: <https://www.dailymaverick.co.za/author/william-bird-thandi-smith/>.

¹⁶ Accessible at <https://padre.org.za/about>.

collaborated with the South African National Editors' Forum (SANEF) and others to develop a handbook for journalists, titled 'South Africa 2019 elections: Handbook for journalists'.¹⁷ In the context of COVID-19 MMA continues with its advocacy around media and information literacy and files weekly reports on 'Disinformation in a time of Covid-19: Weekly trends in South Africa'.¹⁸ The Centre for Analytics and Behavioural Change (CABC) is conducting important research on disinformation and divisive and polarising rhetoric that is promulgated online. In 2020, CABC published an 'Interim report on Xenophobia on South African Social Media', in which it investigated the intentional promotion of xenophobic conversations highlighting important points about networks, and the role of promotional accounts on Twitter.¹⁹

POTENTIALLY HARMFUL MEASURES

26. MMA notes that there are instances where measures aggravate or led to human rights violations, in particular the right to freedom of opinion and expression. MMA highlights categories of measures that may be harmful:

26.1. **State responses:** As noted above MMA is concerned about the misuse of law reform to clamp down on dissent and limit freedom of expression under the guise of addressing disinformation. Further to this, MMA is of the view that, at times, states intentionally limit access to information – for example, the recent internet shutdown in Uganda. States themselves may also be among those spreading disinformation. We are further concerned about the potential for states to facilitate well-resourced campaigns and use social media platforms to abuse freedom of expression and heighten anxiety and tensions.

26.2. **Technological responses:** Algorithms that serve to favour sensational and emotive content and disinformation are of grave concern. Easily available tools that can be abused to manipulate images, create deep and shallow fakes equally pose threats to the triad of information rights. Failure to clearly identify advertising content to users is of further concern and is contributing to the erosion of information rights.

KEY RECOMMENDATIONS

27. MMA lists below several general recommendations that we believe could support in the fight against disinformation, and which do not risk the advancement of the right to freedom of expression:

27.1. Ensure greater awareness of instruments around media freedom, such as the Declaration of Principles on Freedom of Expression and Access to Information in Africa.²⁰

¹⁷ Accessible at <https://sanef.org.za/elections-2019/>.

¹⁸ Accessible at <https://www.dailymaverick.co.za/author/william-bird-thandi-smith/>.

¹⁹ Accessible at: <https://www.cabc.org.za/reports/2020-09-04-interim-report-on-xenophobia-on-south-african-social-media/>.

²⁰ Accessible at

<https://www.achpr.org/legalinstruments/detail?id=69#:~:text=The%20Declaration%20establishes%20or%20affirms.to%20expr ess%20and%20disseminate%20information.>

- 27.2. Ensure the importance of public interest content - that is accurate and credible and is available to everyone. This includes ensuring that freedom of expression, ongoing accurate communication by states, and access to information are core issues addressed at all levels. Further to this, it is important to ensure that states communicate effectively, openly, and transparently on an ongoing basis, and that relevant and appropriate information is easily accessible to all.
- 27.3. Ensure the protection and independence of public broadcasters, and diverse sustainable and media environments.²¹
- 27.4. Ensure significantly higher levels of transparency and accountability of platforms and their algorithms. This may include ensuring that platforms align with internationally accepted norms and standards, particularly in the context of elections.
- 27.5. Ensure systems like Real411 are developed in states to help build and promote a multi-stakeholder approach to digital evils.
- 27.6. Ensure media and information literacy is available to all people – both children and adults. It should be built into school curricula, covering a range of issues, and enabling active informed participation in a digital environment. Disinformation seldom occurs in isolation of other big issues, so there is a need for a rapid response system coordinated by the media, the state, and civil society organisations with support from platforms. Further to this, it would be useful to develop a glossary of terms around disinformation to help educate users. At the same time as providing digital literacy skills, it is also important to ensure that marginalised and at-risk populations, such as women, children and people with disabilities, have adequate and meaningful access to the internet.²²

CONCLUDING REMARKS

28. MMA welcomes and encourages the collaborative and inclusive approach of the Special Rapporteur. We appreciate the opportunity to provide this submission and we remain available to assist the Special Rapporteur, including by providing further written or oral submissions at the appropriate time. Please do not hesitate to contact us should you require any further information.

**Media Monitoring Africa
Johannesburg, 2021**

²¹ See Independent Panel Report Inquiry into Media Ethics and Credibility by: Judge (retired) Kathleen Satchwell, Nikiwe Bikitsha, Rich Mkhondo Commissioned by the South African National Editors' Forum (2021) (accessible at <https://sanef.org.za/wp-content/uploads/2021/01/SANEF-ethics-report-OK.pdf>).

²² See MMA, the Association for Progressive Communications, the Interactive Advertising Bureau of South Africa and the South African National Editors' Forum, 'Seven-point plan regarding how to achieve universal access to the internet and free public access' (accessible at <https://internetaccess.africa/universal-access/>).