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TO: SPECIAL RAPPORTEUR ON FREEDOM OF OPINION AND EXPRESSION
C/o Irene Khan
E-mail: hrc-sr-freedex@un.org

SUBMISSION BY MEDIA MONITORING AFRICA:

CALL FOR INPUT TO THE THEMATIC REPORT ON FREEDOM OF EXPRESSION AND ELECTIONS IN THE DIGITAL AGE

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INTRODUCTION

1.   Media Monitoring Africa ("MMA") welcomes the opportunity to provide this submission to the Special Rapporteur on her upcoming report.

2.   MMA, established in 1993, is a not-for-profit organisation, based in South Africa. It is an innovative organisation which plays an active role in advocating for access to information, freedom of expression, and the responsible free flow of information to the public. MMA has engaged extensively with questions around access to information, freedom of expression, and dis/misinformation during elections.[1] Notably, MMA pioneered the development of an innovative online platform, the Real411, for public reporting of mis and disinformation.[2] During elections in South Africa, Real411 is used to respond to disinformation in terms of a unique tri-partied framework between MMA, the Independent Electoral Commission ("IEC"), and the social media platforms (Meta, TikTok and Google). Drawing on analytics from Real411, MMA prepared a report on the Impact of Mis- and Disinformation in the 2024 National and Provincial Elections in South Africa.[3]

3.   Aligned with its expertise, MMA's responses will be from a South African perspective with a focus on the impact of mis- and disinformation as well as innovative responses and good practices.

MIS AND DISINFORMATION TRENDS

4.   During the 2024 general election in South Africa, the Real411 received over 285 raising concerns of mis and disinformation, hate speech, incitement, and harassment online. Our work revealed interesting key trends relating to the spread of false information:[4]

    4.1   We saw complaints relating to **false information regarding electoral processes**. This may be linked to new processes aligned with recent legislative reforms to South Africa's electrical laws, for example, additional ballots and independent candidates.[5] While many posts were relatively innocuous, others pertaining to the storage of ballots and changes in voting stations were concerning and risked generating heightened confusion and anxiety during the elections. We further saw information intended to **undermine the credibility of the IEC and its commissioners**. This included direct attacks by political parties and candidates including unfounded

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[1] For example, MMA has prepared submissions on free and fair Local Government Elections during COVID and submissions on the importance of internet access, zero-rated election-related content, and the safety of journalists during elections. These Submissions by MMA can be accessed on the Independent Electoral Commissions website (here). MMA has also, for over two decades, published briefs analysing media coverage during the election period in South Africa. See MMA, 'Election Monitoring Reports' (accessible here).

[2] Real411 (accessible here); See MMA, 'Final: Impact of Mis- and Disinformation in the 2024 National and Provincial Elections in South Africa' (2024) (accessible here); Bird & Smith, 'Real411 is ready to process your complaints about election misinformation and disinformation' *Daily Maverick* (2024) (accessible here); and Bird & Smith, 'Real411 develops new tool to track incitement on social media' *Daily Maverick* (2024) (accessible here) for more information on Real411.

[3] MMA, 'Final: Impact of Mis- and Disinformation in the 2024 National and Provincial Elections in South Africa' (2024) (accessible here); MMA, 'Interim: Impact of Mis- and Disinformation in the 2024 National and Provincial Elections in South Africa' (2024) (accessible here). MMA has also

[4] Id.

[5] Independent Electoral Commission "What's new in the 2024 Elections?" (2024) (accessible here).

accusations against the IEC and its commissioners. The attacks appeared to be aimed at delegitimising the elections and weakening trust in democratic institutions.

4.2 Complaints also pertained to **false information regarding parties and candidates** either by parties sharing false information about their own performance, or parties making false or misleading claims to discredit other parties. While it is not an uncommon feature in politics, we were concerned by content that sought to inflame tensions along racial and ethnic lines.

4.3 We also saw instances of the use – or rather misuse – of **digital tools to create and disseminate false information**. One example implicated the uMkhonto weSizwe ("MK") party. A doctored video was shared depicting Donald Trump endorsing MK.[6] We note with concern the use of digital tools to manipulate and spread content – such as the Trump video – that are intentionally created to present a false narrative.

4.4 Of particular concern, we received complaints regarding **false information in relation to election results**. This threatened to undermine the integrity of the IEC and created heightened anxiety in areas – such as KwaZulu Natal, where there were genuine concerns about post-election conflict.

4.5 Overwhelmingly, **X was the platform on which the most number of complaints** were received across all categories of complaints, particularly for mis- and disinformation. The second and third platforms were TikTok and WhatsApp respectively.

PROBLEMATIC EFFORTS TO REGULATE DISINFORMATION

5. In the build-up to the elections, the South African Films and Publications Board ("FPB") published an official notice that sought to expand the definition of "prohibited content" to include "disinformation" and "misinformation," criminalising their distribution and empowering the FPB to impose fines during the election period. Following failed attempts at engagement, MMA and others took the FPB to court due to concerns the provisions were unconstitutional, vague, and would unduly limit freedom of expression and political rights. While we supported lawful efforts to address disinformation, we cautioned that overly broad, punitive measures could stifle public discourse. Following the initial stages of the litigation, the FPB withdrew the notice.[7]

6. Regulating misinformation and disinformation, if done incorrectly, such as by imposing **sudden, imprecise and heavy-handed criminal sanctions, comes at the cost of stifling public and political discourse and casting a chilling effect on the free flow of even harmless ideas and information**. Regulatory measures, if needed, should be clear, proportionate, and carefully crafted to avoid unintended consequences, such as the suppression of legitimate political discourse or the imposition of unjust penalties.

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[6] Africa Check "No, former US president Donald Trump has not backed South Africa's newly formed uMkhonto weSizwe party – video doctored" (2024) (accessible here).
[7] See the case page (here).

Threats

7. Marginalised groups, such as **foreign nationals and ethnic minorities**, often face increased hostility during election periods and, in South Africa, anti-migrant rhetoric is a recurring issue. The rise of groups like Operation Dudula, an anti-migrant political party with a history of hate speech and violence, presents a significant threat to democracy, especially during elections.[8] Their actions, including protests at foreign embassies and denying essential services like healthcare to individuals based on nationality, highlight the growing intersection of xenophobia and disinformation within the electoral process.[9]

8. Political parties also targeted foreign nationals. For example, leaders of the political party, the Patriotic Alliance have taken direct action by intercepting hundreds of foreign nationals attempting to cross from Zimbabwe into South Africa near the Beitbridge border post.[10] Through social media, Patriotic Alliance leaders like Gayton McKenzie and Kenny Kunene have showcased their efforts online, emphasising the need to prevent further influx of immigrants. These actions perpetuate the narrative of immigrants as threats, contributing to heightened tensions and reinforcing stereotypes. This raises significant questions about the role of political leaders in shaping public discourse and the potential consequences of such rhetoric on social cohesion and immigration policies.

9. During elections in South Africa, **journalists** encounter numerous obstacles that hinder their ability to inform the public and hold those in power accountable. A troubling incident during the launch of the MK Party's manifesto on 18 May 2024, involved journalists facing physical aggression from individuals in military attire, raising alarm over the treatment of media at a well-organised political event.[11] Although most journalists are accustomed to danger, the lack of legitimate risk at this rally made the violence particularly concerning, especially as **women journalists were disproportionately targeted**.[12] These assaults underline the essential role of media in ensuring free and fair elections. We are concerned that the protection of journalists – addressed in our electoral codes – is often overlooked.[13] In *Brown v Economic Freedom Fighters*, journalist Karima Brown faced death and rape threats after her personal information was shared online by a political party leader.[14] The court found that this act violated protections under the Electoral Commission Act, emphasising political parties' responsibility to prevent intimidation and abuse of journalists. However, such harassment remains a pervasive tactic to silence critical reporting, especially during elections when tensions escalate. MMA has developed the Media Attack Reporting System ("**MARS**"), an online tool to track threats against journalists.[15] During the election period, MARS documented 1 025 online attacks, with the majority targeting women journalists.[16] These attacks were characterised by sexualised and

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[8] Burke "Vigilante groups form in South Africa amid looting and violence" (2021) (accessible here).

[9] Id.

[10] No author "PA leader McKenzie leads drive to stem illegal entry into SA by foreigners" *Times Live* (4 January 2024) (accessible here).

[11] Bird & Smith "Time to remind parties of the Electoral Code and its protection of journalists" (2024) (accessible here).

[12] Id.

[13] Id.

[14] *Brown v Economic Freedom Fighters and Others* [2019] ZAGPJHC 166; [2019] 3 All SA 499 (GJ); 2019 (6) SA 23 (GJ) (accessible here).

[15] MARS (accessible here).

[16] MMA 'Media Performance Review: National and Provincial Elections 2024' (2024) (accessible here).

misogynistic language, highlighting a **direct attack on freedom of expression and press freedom during elections**.

10. Without robust protections for journalists and greater efforts to promote media diversity, the electorate's ability to make informed decisions is compromised, undermining democratic participation and accountability.[17]

ROLE OF SOCIAL MEDIA INFLUENCERS

11. Influencers play a significant role during elections, either positively by promoting voter awareness and debunking false information or negatively by spreading divisive or unverified content. In South Africa, some influencers collaborate with organisations to counter misinformation, using their reach to encourage responsible online behaviour.[18] Conversely, others contribute to harmful narratives by amplifying inflammatory posts, often prioritising engagement over truth. Social media's anonymity and lack of accountability further enable such behaviour, posing risks to democratic processes.

12. South Africa is no stranger to using social media influencers during elections. In 2017, allegations surfaced that the African National Congress (ANC) had planned to spend R2.2 million on a campaign involving 200 influencers to disseminate positive narratives about the party and undermine opposition parties through disinformation.[19] Although some elements of the campaign did not materialise, this incident highlighted the potential for unscrupulous tactics to manipulate voters.

13. South Africa has well-established regulations for political advertising in traditional media formats, overseen by the Independent Communications Authority of South Africa ("ICASA"). These rules ensure transparency by requiring clear labelling of political advertisements and disclosure of party affiliations. However, **no equivalent framework exists for political campaigns conducted through social media influencers.**

14. In February 2024, ICASA amended its regulations to include independent candidates in election advertising rules for the first time, yet these updates did not address the growing role of social media. This omission risks undermining efforts to ensure fairness and accountability in political campaigning.

RECOMMENDATIONS AND GOOD PRACTICES

The Real411

15. Launched in 2019 by MMA in collaboration with the IEC, the Real411 is a groundbreaking public platform designed to address misinformation and disinformation. Initially created to support democratic processes, the platform played a pivotal role as the official reporting mechanism for online harms during the 2024 elections. Beyond elections, Real411 operates

[17] Institute for Justice and Reconciliation "Weakening of support for democratic elections? South African's views on elections and accountability" (2022) (accessible here).
[18] Christy Chitengu "Should social media influences have to disclose paid political work" (2024) (accessible here).
[19] amaBhungane "Inside the ANC's 'black ops' election campaign" (2017) (accessible here).

year-round, empowering the public to report four categories of online harms: disinformation, harassment, hate speech, and incitement to violence.[20]

16. The platform functions as a one-stop complaints portal, providing a streamlined, transparent mechanism for assessing harmful content in line with South African laws and constitutional principles. Complaints are reviewed by a diverse panel of experts, including academics, IT professionals, legal practitioners, and members of the public, all of whom undergo rigorous training facilitated by MMA and the Mandela Institute of Law at Wits University. Election-related complaints are further referred to the IEC for action, ensuring alignment with electoral laws and processes.[21]

17. Real411's unique structure offers several advantages. It tracks trends in misinformation, serving as an early warning system by identifying patterns that might otherwise go unnoticed within echo chambers. It also maintains a publicly accessible archive of complaints, promoting transparency and accountability. Complainants can monitor the progress of their reports, appeal decisions, or request re-reviews, with appeals overseen by retired Constitutional Court judge, Justice Zak Yacoob.[22]

18. With over 3,000 complaints reviewed to date, Real411 has demonstrated impartiality and effectiveness, contributing to free, fair, and credible elections. **By upholding information integrity and fostering a responsible media environment, Real411 advances access to information, freedom of expression, and the safeguarding of democratic principles**.

Monitoring the Media

19. MMA has been at the forefront of monitoring media coverage during every national, provincial, and local election in South Africa since 1994. In the recent elections, we monitored 95 media outlets. **Through this monitoring, we critically analyse, support, and challenge claims about media coverage**. While complaints about media bias often surface, our findings during election periods consistently show that South African media maintain a high standard of fairness. Currently, an impressive 95% of over 9,000 analysed news stories are deemed fair, underscoring the media's commitment to impartiality during these critical times.[23] Through its 2024 election Media Performance Review, MMA designed a set of indicators to assess whether the conduct of the media during elections was fair.[24] The indicators outlined in the report are the equitability of media coverage, the diversity of coverage, the inclusion of women, credibility of information and reasonableness.[25]

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[20] Bird & Smith, 'Real411 develops new tool to track incitement on social media' (27 May 2024) *Daily Maverick* (accessible here).
[21] Bird & Smith, 'Real411 is ready to process your complaints about election misinformation and disinformation' (5 May 2024) *Daily Maverick* (accessible here).
[22] Id.
[23] Bird & Smith, 'Time to remind parties of the Electoral Code and its protection of journalists' (20 May 2024) *Daily Maverick* (accessible here).
[24] See n 16 above; Bird & Smith, "Media Coverage of South Africa's 2024 elections: Setting standards for a Media Performance Review" (2024) 23 *Journal of African Elections* (accessible here).
[25] Id.

20. The publication of MMA's <u>briefs</u> and reviews provides the public with a snapshot of what type of content is being covered during election periods which **allows for all actors in the political sphere to identify gaps and threats to free expression and information in elections**.

Engaging responsibly with AI

21. In an era where AI plays an increasing role in political communication, fostering trust and credibility is essential. To this end, political parties are encouraged to develop and publicly share principles guiding their use of AI systems. To assist with this process, MMA created **guidelines that outline key considerations for responsible AI use**, tailored to the South African context.[26] These guidelines emphasise transparency, accountability, and the alignment of AI practices with democratic values, aiming to promote healthier political discourse and rebuild public trust.

22. Political parties are urged to be transparent about their AI use by linking AI practices to existing party values and policies, such as manifestos and data privacy commitments. The guidelines also address fairness and privacy, urging parties to safeguard personal data when using third-party AI platforms and to mitigate algorithmic bias by training AI in local languages and contexts. Building internal AI expertise through training for party members, particularly communications teams, is recommended to ensure responsible usage. Additionally, parties are encouraged to clarify their relationships with external AI providers, develop strategies to manage dependency on third-party systems and explore opportunities for in-house AI development where feasible.

23. To ensure compliance, the guidelines propose defining consequences for misuse, creating mechanisms for enforcement, and establishing plans for addressing non-compliance. Parties are also encouraged to adapt the general principles to their unique contexts by engaging leadership, communications staff, technology experts, and constituents in the process.

24. These guidelines aim to promote responsible self-regulation in the use of AI, ultimately advancing healthier political engagement and safeguarding democratic integrity. We are seeking to have these guidelines considered for inclusion in the updated code of conduct ahead of the 2026 elections.[27]

CONCLUSION

25. MMA recommends the above as innovative, rights-based, and responsive measures to advance information integrity during elections. We are available to provide further guidance and support as needed.

16 January 2025
Media Monitoring Africa

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[26] MMA, 'Guideline for Political Parties Using Generative AI' (2024) (accessible <u>here</u>).
[27] Bird & Smith, 'As the elections draw near, it's time to ask political parties about their use of Artificial Intelligence' (12 May 2024) *Daily Maverick* (accessible <u>here</u>).