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**TO: ARTICLE 19**  
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**SUBMISSION BY MEDIA MONITORING AFRICA:**

**CONSULTATION PAPER ON SOCIAL MEDIA COUNCILS**

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For more information, please visit <https://altadvisory.africa/>.*

## **INTRODUCTION**

1. Media Monitoring Africa (MMA) welcomes the opportunity to provide this submission to ARTICLE 19 on the consultation paper regarding Social Media Councils (SMCs). At the outset, MMA wishes to acknowledge the consultative approach taken by ARTICLE 19, as this will serve to ensure that the consultation paper is ultimately more robust and better able to meet its intended objectives.
2. This submission is structured as follows:
  - 2.1. **First**, an overview of MMA and our relevant expertise, including the development and implementation of the Real411.
  - 2.2. **Second**, our submissions regarding the substantive standards to be applied.
  - 2.3. **Third**, our submissions regarding the functions to be fulfilled.
  - 2.4. **Fourth**, our submissions regarding the establishment at the global or national level.
  - 2.5. **Fifth**, our submissions regarding subject-matter jurisdiction.
  - 2.6. **Sixth**, our submissions regarding the technical questions.
3. Each of these points is dealt with in turn below. We note that MMA falls into civil society category of stakeholders, and is available and willing to participate in follow-up interviews, calls or meetings.

## **OVERVIEW OF MEDIA MONITORING AFRICA**

### ***About MMA***

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 we seek to address through a human rights-based approach are media ethics, media quality and media freedom.

5. MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical and critical media culture. We have over 20 years' experience in media monitoring and direct engagement with media, civil society organisations 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.
6. For more about MMA, please visit: [mediamonitoringafrica.org](http://mediamonitoringafrica.org).

***Project overview: Real411***

7. In April 2019, MMA, together with the Independent Electoral Commission of South Africa (IEC), launched a project to combat disinformation online during the election period. In this regard, MMA established a publicly-accessible complaints portal, through which members of the public could report concerns of disinformation that contravened section 89(2) of the Electoral Act, 1998, which prohibits the dissemination of false statements intended to harm or disrupt the conduct or outcome of the elections.
8. The process worked as follows:
  - 8.1. On receipt of a complaint, the Secretariat would forward this to members of the Digital Disinformation Complaints Committee (DDC). Each complaint would be reviewed by three persons: one with media expertise; one with digital expertise; and one with legal expertise. The DDC would then make a recommendation on whether the content of the complaint constituted disinformation, and if so, what the proposed steps should be.
  - 8.2. Thereafter, the IEC – as the public body responsible for ensuring free, fair and credible elections – would then review the recommendation provided by the DDC, and make a final determination on the outcome of the complaint.
  - 8.3. In making this determination, the IEC was required to have regard to the domestic and international legal framework on the right to freedom of expression, the public interest in the content of the complaint, and any other relevant factors. Further action could include, for instance, engagement with the social media platforms, referral to another appropriate body (such as the South African Human Rights Council or the Press Council), or the publication of a counter-narrative to correct the false information being disseminated.

- 8.4. In an effort to ensure transparency and accountability, the outcomes of all complaints were published on the website, and any affected person had the opportunity to review the determination made by the IEC before the Electoral Court.
9. To our knowledge, this project was the first of its kind internationally. The process worked within the existing legal frameworks, and did not create any new criminal offences. This project is now being rolled out more broadly in South Africa, beyond the election period, with a focus on the following speech offences: (i) disinformation; (ii) incitement to violence; (iii) hate speech; and (iv) harassment of journalists. The new iteration of the project will continue to emphasise the importance of a multi-stakeholder approach in addressing concerns of this nature, and will further continue to prioritise the need for transparency and accountability in resolving complaints of speech offences.
10. For more about the project, please visit [real411.org](http://real411.org).

#### **SUBMISSIONS REGARDING THE SUBSTANTIVE STANDARDS TO BE APPLIED**

11. As a point of departure, we note that MMA supports the view taken by ARTICLE 19 that content moderation decisions and practices must accord with international law standards, subject to an appropriate margin of appreciation. In our view, pursuing this approach ensures that there is an objective and consistent standard that can be applied when making determinations regarding content moderation.
12. As such, MMA supports **Option A** regarding the substantive standards to be applied. The majority of states globally have already agreed to be bound by these standards, and there is further a helpful body of jurisprudence from domestic, regional and international courts and tribunals that have provided interpretive guidance on these provisions. Going forward, as the SMCs undertake their work, this will develop a body of effective jurisprudence to provide the necessary interpretation and guidance that will be needed to fully understand the application of international law standards to content moderation.
13. In our view, the development of a new code or set of principles has several risks. First, it may delay or entirely derail the process of the SMCs, in an effort to reach agreement from different stakeholders with markedly different interests. Added to this, as we have seen from the development of terms of use of the social media platforms, these standards often fall beyond the bounds of justifiable limitations on the right to freedom of expression. In our view, it would be better, particularly as a starting point, to apply international law standards that have already been agreed upon and generally applied.

## **SUBMISSIONS REGARDING THE FUNCTIONS TO BE FULFILLED**

14. On this question, MMA supports **Option C**, in that the SMCs should perform a role in both an advisory capacity and as an appeals mechanism. In this regard, we note that the SMCs have a key role to play in an advisory capacity, to ensure that the terms of use of the different platforms are aligned to international law standards, and that any restrictions to rights – particularly the right to freedom of expression – comply with the three-part test for a justifiable limitation.
15. However, in our view, this role would be somewhat pyrrhic if the SMCs did not have a more direct role to play in guiding the content moderation decisions of the social media platforms through an appeals mechanism. The lack of transparency and accountability in the content moderation and decision-making processes of social media platforms has been the subject of significant consternation, and has yet to be remedied by the social media platforms themselves.
16. In our view, this would serve to increase public trust – both in the social media platforms and the SMCs – and bridge the disjunct that users sometimes feel between what has been said online and the practical impact that this has on everyday lives. From our experience with the development and implementation of the Real411, we would recommend the following to handle the question of scale:
  - 16.1. There needs to be clear criteria set for what complaints can be submitted to the SMCs. It should not serve as an appeals mechanism for all complaints, but should instead deal with the most egregious concerns for violations of rights.
  - 16.2. This issue also speaks to the scope of complaints that the SMCs will be handling. In our view, the SMCs should circumscribe the scope to deal with the most pressing or challenging issues being faced by the social media platforms. In doing so, this will also mitigate against the SMCs becoming over-burdened.
  - 16.3. The establishment of a user-friendly digital complaints portal and effective secretariat can also go a long way in assisting with an initial filtering process of complaints. This can assist with, for example, identifying duplications in complaints about the same content, and ensuring that this is dealt with in a consistent manner.

- 16.4. The structure implemented through the Real411 may also be of assistance. Through this structure, there may be a series of sub-committees who undertake the initial investigation and review of the complaints received. These sub-committees can be made up of persons with relevant subject-matter or regional-level expertise. The designated sub-committee would then make a preliminary recommendation to the experts of the SMCs, who are the final decision-makers. This approach lends capacity to the SMCs as the final arbiters, while still ensuring that there is consistency in the decision-making processes of the SMCs.
17. We would be happy to share more information about our process and learnings from the Real411, if that would be of assistance to determining the functions to be performed by the SMCs.

#### **SUBMISSIONS REGARDING THE ESTABLISHMENT AT THE GLOBAL OR NATIONAL LEVEL**

18. In our view, the SMC should be a nominal body established at the global level, with regional representation. This would therefore be a combination of **Option A** and **Option C**. This would ensure universal and consistent determinations being made, and would serve to retain the independence and expertise necessary for the SMC to fulfil its mandate. It would also avoid the possibility of different decisions being taken by different SMCs, and thereby entrenching the current challenge of inconsistent decision-making processes.
19. However, we emphasise that the SMC should have regional representation to ensure that the views, perspectives and cultural sensitivities of different regions are taken into account. Ensuring that there is appropriate regional representation would also allay the concerns that a global SMC is detached from local contexts. In this regard, we urge ARTICLE 19 to have appropriate regard to be inclusive of persons from the global south, and be conscious of the fact that different sub-regions within global south blocs often have their own cultural norms and practices.
20. We would also suggest that regional advisory boards be established for each region, to be able to provide guidance and information to the SMC where needed. The members of the advisory boards, who would be locally-based, could also undertake capacity-building and awareness-raising at the local levels, in order to expand the reach of the SMC.

21. In our view, the establishment of national SMCs would be an unwieldy process. In our experience, not all countries have the necessary skills and expertise to perform this function. This would therefore lead to the likelihood of inconsistency and confusion, and would not serve the overarching purpose of this process.

#### **SUBMISSIONS REGARDING THE SUBJECT-MATTER JURISDICTION**

22. In our view, we would support **Option B** in the establishment on a specialised SMC as a point of departure. We note that the terms of use of the social media platforms cover a wide range of issues, but some are relatively uncontroversial. We have recently undertaken a similar exercise in circumscribing the scope of the next iteration of the Real411, and have identified the following issues as priorities: (i) disinformation; (ii) incitement to violence; (iii) hate speech; and (iv) the harassment of journalists. A similar approach may be followed by the SMCs.
23. We would also emphasise that the best interests of the child is a matter of priority. This is a key area of focus for MMA. In exercising the subject-matter jurisdiction, careful regard must also be had to the vulnerability and evolving capacity of children, the need to protect children online, and the importance of provision of young users of critical digital and media literacy skills to create a safer and more open internet through social media platforms.

#### **SUBMISSIONS REGARDING THE TECHNICAL QUESTIONS**

24. MMA supports the multi-stakeholder approach that is being followed. We note the importance of having a wide range of stakeholders, including the social media platforms, to ensure compliance and legitimacy of the process. This wide range of stakeholders has a particularly important role to play in the advisory functions that the SMCs will perform. However, in respect of the appeals function, we submit that the appeals body should be made up of independent experts, (including possibly retired judges) who are not affiliated with any particular social media or government, to ensure the integrity of the decision-making process.
25. Lastly, in respect of funding, we submit that while various sources of funds can be accepted, this should be held in a blind trust and independently administered to ensure the impartiality of the SMCs. There will also need to be oversight in place, such as the auditing of funds, to provide for transparency and accountability.

**CONCLUDING REMARKS**

26. MMA reiterates our appreciation to ARTICLE 19 for the opportunity to provide this submission. We remain available and willing to contribute to this process going forward and would like to contribute to further discussions and developments. Please do not hesitate to contact us should you wish to discuss any aspect of this submission further.

**Media Monitoring Africa**

**Johannesburg, 6 December 2019**