



DISINFORMATION DURING ELECTIONS

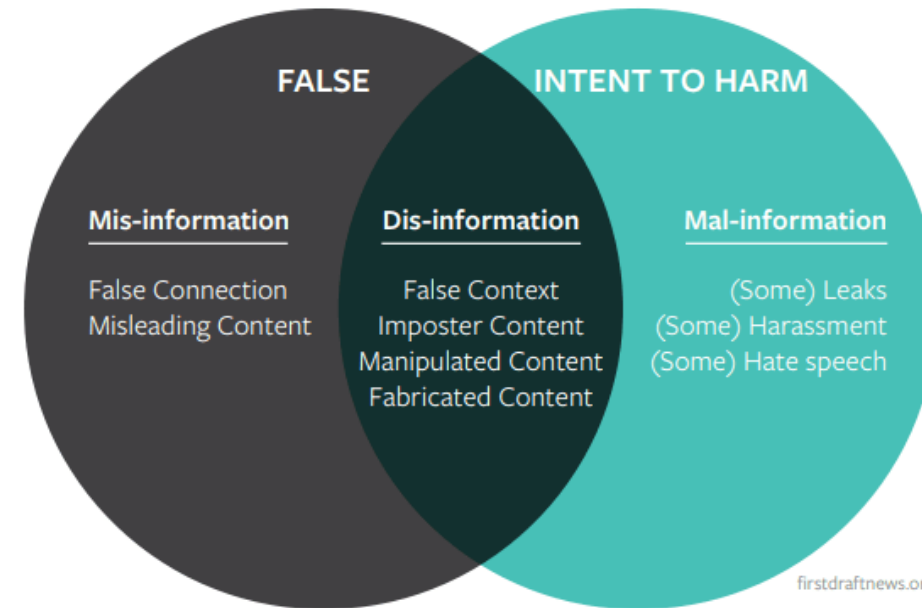
MODULE III



Defining the terminology

- **'Fake news':**
 - Inadequate and misleading.
 - Term should be avoided.
- **Misinformation:**
 - Refers to misleading information created or disseminated without manipulative or malicious intent.
- **Disinformation:**
 - Refers to deliberate (often orchestrated) attempts to confuse or manipulate people through delivering dishonest information to them.

QUESTION FOR DISCUSSION: What strategies do you apply in your organisation to deal with the risks of publishing false information?



Source: UNESCO, 'Journalism, 'fake news' and disinformation': Handbook for journalism education and training', accessible here: <https://en.unesco.org/fightfakenews>.

Regional and regulatory responses

ACHPR Joint Declaration on Freedom of Expression and 'Fake News', Disinformation and Propaganda:

- 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 freedom of expression.
- State actors should **not make, sponsor, encourage or disseminate** disinformation or propaganda.
- 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.
- The right to impart information and ideas is **not limited to correct statements**, and also protects information and ideas that may **shock, offend and disturb**.

Efforts by the European Commission:

- Extensive study to develop **proposals and measures** to be implemented in Europe to tackle disinformation.
- Published a **Code of Practice on Disinformation**, including an Annex of Best Practice and Annex on Current Best Practices from Signatories of the Code of Practice.
- Recently enacted the **Digital Services Act**.

Regulatory responses:

- **Not necessarily illegal content**, particularly in a democratic context where political speech is recognised as deserving of strong free speech protections.
- Regulatory measures in other countries around the world tend towards **criminalising** the dissemination of false information, which may have a **chilling effect** on freedom of expression.

Electoral laws on false statements

Section 89 of the Electoral Act: Intentional false statements

No person may publish any false information with the intention of –

- (a) disrupting or preventing an election;
- (b) creating hostility or fear in order to influence the conduct or outcome of an election; or
- (c) influencing the outcome or conduct of an election.

Section 9(1)(b) of the Electoral Code of Conduct: Prohibited conduct

No registered party or candidate may ...

- (b) publish false or defamatory allegations in connection with an election in respect of –
 - (i) a party, its candidates, representatives or members; or
 - (ii) a candidate or that candidate's representatives.

What can the media do?

- Apply a **standard of care**: ethical; reasonable; important to distinguish false information from legitimate forms of speech, such as artistic expression, protected comment, satire or parody.
- Publish **counter-narratives**:
 - Provide **corrections to false information** and highlight the work being done by **fact-checking organisations**.
 - **Suggested approach**:
 - Reduce arguments that support misinformation.
 - Engage audiences in scrutiny and counterarguing of information.
 - Introduce new information as part of the debunking message.
- **Fact-check and verify your information**:
 - **Checklist for verifying digital content (UNESCO)**
 - Is the content original, or has it been ‘scraped’ from previous reporting and re-appropriated misleadingly?
 - Has the content been digitally manipulated in some way?
 - Can we confirm the time and place of the photograph or video capture, using available metadata?
 - Can we confirm the time and place of the photograph or video capture, using visual clues in the content?

TheReal411: MMA has developed an online platform to report digital disinformation and address it in an open, legal manner.
<https://www.real411.org/>

The reasonableness defence

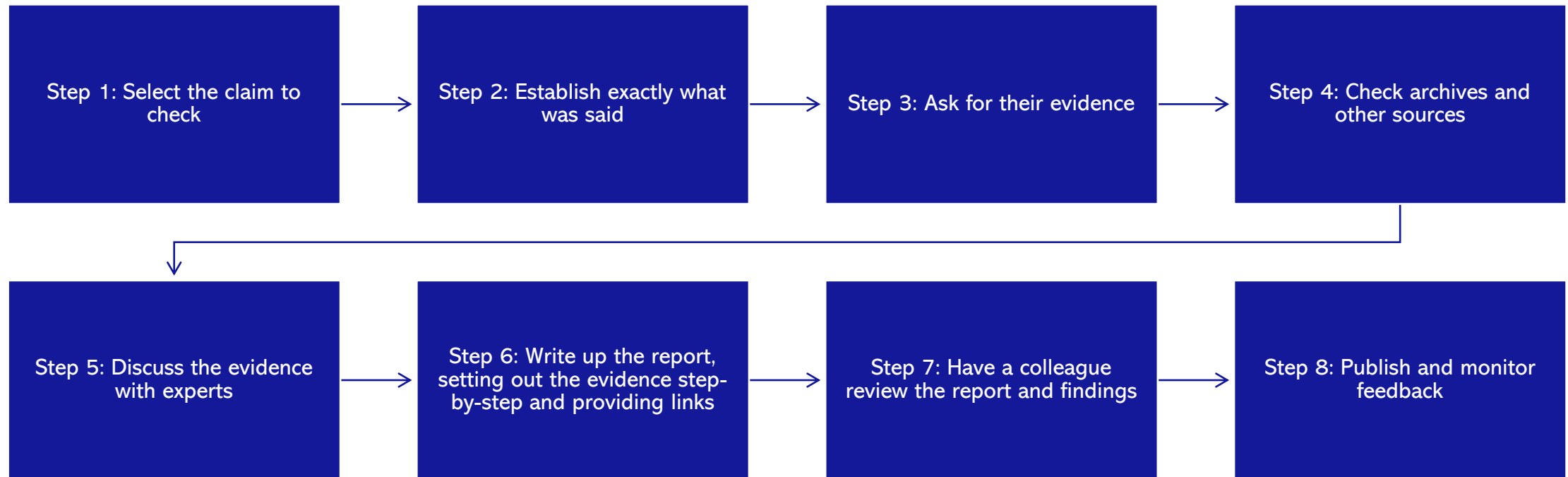
The case of **National Media Limited and Others v Bogoshi (1998)** developed the crucial reasonableness defence, which is relevant for media institutions in relation to potentially false and defamatory statements. The Supreme Court of Appeal held that:

“In my judgment we must adopt this approach by stating that the publication in the press of false defamatory allegations of fact will not be regarded as unlawful if, upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time.”

*In considering the reasonableness of the publication account must obviously be taken of the nature, extent and tone of the allegations. We know, for instance, that **greater latitude is usually allowed in respect of political discussion** ... and that the **tone** in which a newspaper article is written, or the way in which it is presented, sometimes provides additional, and perhaps unnecessary, sting. What will also figure prominently, is the nature of the information on which the allegations were based and the reliability of their source, as well as the **steps taken to verify the information**. Ultimately there can be no justification for the publication of untruths, and members of the press should not be left with the impression that they have a licence to lower the standards of care which must be observed before defamatory matter is published in a newspaper.”*

Fact-checking in eight steps

Africa Check explains their approach to fact-checking in the following eight steps:



Source: Africa Check, 'How we work', (undated) accessible here: <https://africacheck.org/about-us/how-we-work/>.

Suggested resources

- IEC, 'Municipal elections handbook', (2016) (accessible [here](#)).
- Media Monitoring Africa, "Disinformation and 'fake news' during elections: Proposals for the upcoming 2019 General Elections in South Africa' (2018).
- Press Council, 'Code of Conduct and Ethics for the South African Print and Online Media: Decoding the Code sentence by sentence', (1 January 2019) (accessible [here](#)).
- Press Council, 'Guidance notes: A brief for journalists covering the elections', (February 2019) (accessible [here](#)).
- UNESCO, 'Journalism, 'fake news' and disinformation': Handbook for journalism education and training', (2018) (accessible [here](#)).
- UNESCO, 'Elections in Digital Times: A Guide for Electoral Practitioners', (2022) (accessible [here](#)).

For more information and resources, please visit:

<https://elections.sanef.org.za>.