

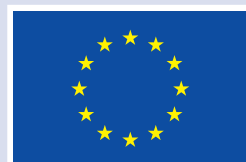
DEMOCRACY
REPORTING
INTERNATIONAL

A NEW FRONTIER

SOCIAL MEDIA / NETWORKS
DISINFORMATION AND
PUBLIC INTERNATIONAL LAW

IN THE CONTEXT OF
ELECTION
OBSERVATION

by Michael Meyer-Resende



CREDITS

Democracy Reporting International (DRI) operates on the conviction that democratic, participatory governance is a human right and governments should be accountable to their citizens. DRI supports democratic governance around the world with a focus on institutions of democracy, such as constitutions, elections, parliaments and rules of democracy grounded in international law. Through careful assessments based on field research with partners, DRI convenes diverse stakeholders to promote policies that strengthen democratic institutions. A non-profit company, DRI is based in Berlin and has offices in Tunisia, Lebanon, Ukraine, Pakistan, Sri Lanka and Myanmar.

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I. SUMMARY

Social media and networks (henceforth ‘social media’) have become an essential space of public and semi-public discourse. They have shown their democratising potential by increasing access to information and greatly lowering the barrier of participation in public debates, however, the last few years have also shown some of the risks that are present in social media. The low barriers to participation have been used by various state and not-state actors attempting to undermine electoral integrity by spreading disinformation, intimidating stakeholders and suppressing free speech.

The social media sphere is managed by a handful of big companies, which have only belatedly woken up to the challenge and started to tighten user policies and to give more attention to paid or unpaid content on their services. Often, they frame the problem in biological terms (“healthy debate”) or vague terms like “positive” discourse, rather than acknowledging that discourse is a social interaction for which a rights-based approach is appropriate, which can draw on an already agreed framework and international legal obligations.

The human rights discourse related to social media has been mostly focused on one right, freedom of expression, with many observers rightly concerned about attempts to stifle free speech on the internet. Additionally, there has been concern over civil rights, in particular the right to privacy. Where social media companies have committed themselves to uphold human rights, e.g. the Global Network Initiative, they have focused on these two rights.

Another aspect of human rights protection has hardly figured in the public debate or company initiatives such as the Global Network Initiative: the right to political participation (article 25 International Covenant on Civil and Political Rights, ICCPR). This right is not only concerned with the *expression* of opinions, but also with their *formation*. This is an agreed concern in Europe as can be seen for example by the existence of public broadcasting in all EU member states. Opinion *formation* is a crucial part of a “genuine” election (as is specified in ICCPR article 25).

According to the UN’s Human Rights Committee the right to vote in elections implies that “voters

should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind” (General Comment 25). These are exactly the concerns raised about speech on social media: threats of violence, hate speech, manipulative interference for example through social bots or through trolls. However, there has been little debate on how these issues could be addressed in the framework of human rights.

While private companies, like social media platforms, are not directly bound by international human rights obligations like the ICCPR, states are expected to enforce human rights obligations also against private parties. In addition to this indirect effect of human rights, the social media companies are also directly bound by commitments they have made in various contexts, such as the Global Network Initiative or obligations emanating from the agreements on business and human rights.

As the formation of opinion is part of international human rights obligations, the role of social media is a legitimate aspect of international election observation. Furthermore, there is massive public interest in the issue; if international election observation does not address the role of social media, it risks missing an important element of the process and thereby relevance. While systematic research is still at the beginning, there is no doubt that social media have an impact in forming opinions.

Currently election observers are set-up to detect traditional manipulations, say ballot box stuffing or a dominance of the ruling party in the public media, but they are not set up to monitor, understand and report on a serious disinformati-





on attempt. It is not a far-fetched scenario that an election with tight competition, where one percent can make the difference, will be hit by a major disinformation attack. Russian actors already tried to do so in the French Presidential elections. Traditional election observation would have little to say in that situation. Already, traditional election observation had little to say on the biggest controversy around the 2016 US elections, namely manipulative interference on social media.

There are three major challenges in observing social media. First, the obligation to allow opinions to form free of threats and manipulation is potentially large and not yet well-defined. Second, the space to be observed, interactions on social media, is also huge. Observers would need to know with some precision what to look for. Any social media information posted somewhere, on any channel, at any time could potentially influence voters.

Third, the technical possibilities to retrieve large data from social media networks have been narrowing. Facebook, in particular, has become much more restrictive in the wake of the Cambridge Analytica scandal; it is not currently possible to retrieve *structured* data from Facebook in a manner that is compliant with their Terms of Service. However, some social media listening agencies do still have access to such data, and researchers can still use web scraping to retrieve data. But even if huge amounts of structured data could be retrieved, analysing this data requires specific technical skills, which creates its own limitations. Furthermore, a lot of social media interaction is moving into closed chat groups, which cannot be monitored by international observers.

II. BACKGROUND

Why Social Media Matter in Elections

Four billion people, more than half of the world's population, uses the internet and three billion use social media regularly. Internet penetration varies widely country-by-country¹ and so does news consumption through social media.²

Concerns about the role of social media in elections have multiplied in the last years, triggered in particular by Russian interference in the US 2016 elections. The problem appears to spread. The Oxford Internet Institute notes:

“The number of countries where formally organised social media manipulation occurs has greatly increased, from 28 to 48 countries globally. The majority of growth comes from political parties who spread disinformation and junk news around election periods. There are

more political parties learning from the strategies deployed during Brexit and the US 2016 Presidential election: more campaigns are using bots, junk news, and disinformation to polarise and manipulate voters.”³

Research is only at the beginning and it cannot be determined with certainty how influential social media are in forming opinions. The answer will differ from country to country and from constituency to constituency. In some countries Facebook alone is so dominant that people do not know the difference between ‘Facebook’ and ‘the internet’, in other countries traditional media remain influential and more trusted than content that emerges in social media with murky or unclear attribution

It is beyond this paper to review the state of the research on social media influence on elections. On one end stands a much-cited study on the 2010 US Congressional elections, which found

1 Data from the Global Digital Report 2018 by We are Social and Hootsuite. As both are companies offering social media related services, the data should be seen with some caution. They can be downloaded here: <https://wearesocial.com/blog/2018/01/global-digital-report-2018>

2 Reuters Digital News Report 2018.

3 Bradshaw, S., Howard, P.N., Challenging Truth and Trust: A Global Inventory of Organized Social Media Manipulation, page 3

that the addition of a button that stated “I voted” on a user’s Facebook site, increased the likelihood of his/her friends to also turn out to vote by 2%. This would be a significant effect and while higher turn-out is good in principle, such a potential to increase turn-out could be abused (for example to only mobilise in certain social constituencies or geographic areas).

The disinformation threat of the 2016 US Presidential elections was described thus: “In the final three months of the US presidential campaign, 20 top-performing false election stories from hoax sites and hyper-partisan blogs generated 8,711,000 shares, reactions, and comments on Facebook. Within the same time period, the 20 best-performing election stories from 19 major news websites generated a total of 7,367,000 shares, reactions, and comments on Facebook.”⁴ On the more sceptical side of research a 2017 study concluded that ‘fake news’ were highly unlikely to have influenced the 2016 US elections in significant ways.

Despite the mixed research results it stands to reason that social media have a significant impact, in particular in countries with weak traditional media and channels of communication. The subject is therefore acute for the election observation community. It is long accepted that the public discourse and debate around elections is an essential part of any electoral process. It is for this reason that election observation missions conduct systematic monitoring of traditional media sources.

Academic studies naturally cover elections that are many months or years passed. Little efforts have been made to follow social media in real time as elections happen, in the way election observers may do. Social media in on-going elections still resemble mostly a black box.

Definitions

This paper is about international law, election observation and disinformation; the latter as defined by the European Commission High-Level Group’s report: “Disinformation (...) includes all forms of false, inaccurate, or misleading information designed, presented and promoted to intentionally cause public harm or for profit.” Other notions like ‘fake news’ should be considered as catchwords of public debate that are not suitable for a facts-based debate. In this paper the focus will be on:

- Disinformation aimed at influencing election outcomes (the example would be the Russian Internet Agency buying political advertising, aimed at US Facebook users, trying to influence the US public debate).
- Disinformation that has the capacity to influence election outcomes, even if that is not the intention.⁵ An example here would be the false news sites with sensational, untrue claims for the American electorate, which Macedonian teenagers created in order to draw traffic that could be monetised by selling advertising space.

⁴ Silverman, C., 2016 This Analysis Shows How Viral Fake Election News Stories Outperformed Real News On Facebook, *Buzzfeed News*, November 16, 2016. <https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>

⁵ Some call wrong information without harmful intent ‘misinformation’, see e.g. ‘Information Disorder’, Council of Europe, 2017, page 5

In the literature a distinction is often made between social media and social networks. The former would be services like Twitter which are aimed at reaching a broad public (anybody can read the tweets which somebody posts), while networks are aimed at connecting people without the intention of reaching the public, such as WhatsApp. Many services combine both aspects. Facebook allows the creation of public websites (political parties use such sites) and even for private accounts allows that posts are publicly posted.

For the purpose of discussing elections both types are relevant, because manipulation can take place on both of them. There have been reports for example, that WhatsApp groups are increasingly used to spread false rumours or incite violence in elections.⁶ So with the focus on disinformation it may not be useful to break down these categories too much.

Even outside social media and networks, disinformation is a concern. In elections questions have been raised about how Google lists search results. Lastly, even the appearance of traditional media online may be of interest: A newspaper may sort its articles in one way in its print versions but gives prominence to completely different articles online and yet promotes different items (articles, videos, etc.) in various social media. (For election observation it is useful to think of digital content in general.) In this paper we use the term social media as a generic term to include social networks as well.

‘Social media monitoring’ is used to denote the idea of social media discourse being an extension of electoral monitoring, insofar as political discourse takes place on social media. In other contexts, like business, the term ‘social media listening’ is more often used for this type of activity. In business social media listening is a wide-spread practice to follow how company products are being discussed in social media. Framing such an activity as ‘listening’ is however not advisable, because it creates mental association with spying, when in fact election observation is a transparent, publicly known activity.

This briefing paper seeks to give impetus to the debate on three questions:

- What does international human rights law, the reference point for international election observation, have to say about social media in elections?
- What has been done practically by observers to monitor social media in elections?
- What else could be done and how should international election observation missions, which have the ambition to comprehensively follow an election approach the task?

⁶ The Guardian, Fears mount over WhatsApp’s role in spreading fake news, 17 June 2018 <https://www.theguardian.com/technology/2018/jun/17/fears-mount-over-whatsapp-role-in-spreading-fake-news>

III. INTERNATIONAL LAW AND NATIONAL LAWS

A genuine democratic election process requires that candidates and political parties can communicate their messages freely, that voters receive diverse information, that they can discuss it freely and are able to make an informed choice.⁷

International law protects free communication as a cornerstone of any democracy. In the words of the UN Human Rights Committee which monitors the implementation of the ICCPR: “The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.”⁸

As the quote makes clear, the focus has been on the freedom of speech for a long time and rightly so. One of the great impediments to democratic elections have been undue restrictions to freedom of speech, especially in authoritarian states

or outright dictatorships. These concerns remain relevant and apply to online expression of opinion as much as to offline expressions. Many elections have been overshadowed by undue restrictions of the internet in order to stifle debate. In many countries draconian cybercrime laws are used to silence free political debate. Based on such laws, websites are closed down, posts deleted, and users prosecuted for expressing their opinion. For example in Egypt the website of Al-Jazeera and the Egyptian site Mada Masr were closed down. Reportedly 35 journalists, bloggers and citizen journalists are detained in Egypt.

The freedom of speech is not unlimited and restrictions are permitted based for example on national security, *ordre public*, or the rights or reputation of others. But in many cases restrictions are disproportionate and political criticism is labelled as terrorism or a threat to national security.

The new threats to democratic discourse in elections do not only emanate however from restrictions to freedom of expression, but rather from

⁷ For more, *EU Election Observation Handbook*, page 78.

⁸ *General Comment 34 on Article 19*, point 13

a manipulative use of social media and other online content. This threat is different. It cannot be conceptualised as a freedom of expression problem. In fact, many disinformation actors may use freedom of expression as a justification: Are the Macedonian youth not allowed to publish whatever they want, including fake news websites? Did the Russian agency that bought advertising space on Facebook to influence American elections not use their freedom of speech?

A different perspective emerges from the **right to political participation**. It is premised on two pillars: freedom of expression, but also on the systemic aspects of opinion *formation* (and not only *expression*). The UN's Human Rights Committee, the monitoring body of the International Covenant on Civil and Political Rights) noted in its General Comment 25 (right to vote and political participation):

“Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”⁹

The mention of undue influence, distortion, inhibition and manipulative interference points to the relevance of Article 25 for the quality of public discourse. It is noteworthy that the Human

Rights Committee adds to these that “reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.” So campaign finance questions are an integral part of the idea of free opinion formation as a basis of genuinely democratic elections.

However, while there is ample literature on freedom of expression and the internet¹⁰, the ‘no-manipulation’ aspect of Article 25 has not been explored, especially not in its practical implications. In its new draft guidelines on public participation, the Office of the United Nations Commissioner for Human Rights (OHCHR) merely notes that “ICTs could negatively affect participation, for example when disinformation and propaganda are spread through ICTs to mislead a population or to interfere with the right to seek and receive, and to impart, information and ideas of all kinds, regardless of frontiers” (point 10).

The contours of the obligation to keep discourse free of manipulation should be explored by the human rights community. Would this for example represent a potential, legitimate limitation to freedom of speech? How could the wide language in General Comment be concretised? What comparative experience from national law could be used?

⁹ UN Human Rights Committee, *General Comment 25*, 1996, point 19

¹⁰ For example: Council of Europe, Recommendation CM/Rec(2014)6 A guide to Human Rights for Internet Users – Explanatory Memorandum, , 2014; Declaration on the Internet Governance Principles, 2011; Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Freedom of Expression and the Internet, 2013; OSCE Representative on Freedom of the Media, Internet Freedom – Position of the Representative on Internet Freedom, 2012.

Social media companies would often be the main addressees, as they shape discourse on their platforms through their user policies. But international human rights obligations do not apply directly to them. However, the UN Human Rights Committee noted:

“The positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure

Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” (paragraph 8).

This area of the ‘horizontal effect’ of human rights is complex and depends on practices in each state. While these cannot be explored in this paper, an argument can be made that governments have an obligation to ensure that social media companies organise discourse on their platforms in a manner that does not unduly distort or allow manipulative interference in order to guarantee proper public participation in electoral processes.

BUSINESS AND HUMAN RIGHTS (CORPORATE SOCIAL RESPONSIBILITY)

The framework for business and human rights provides a wide range of obligations that are relevant to the question of human rights, democracy and social media. Most of these obligations belong to the arena of soft law. The most relevant one from the list of UN Guiding Principles include:

- **Business should “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (No. 13):** Beyond direct business conduct, this obligation highlights that business needs to give attention to the impact of its products. Arguably this is a concern, for example in the case of Facebook which in many countries has no offices and enough staff with local knowledge to understand what is happening on its platform. Or, Facebook did not notice the Russian interference in US elections.
- **The need to have policies and processes that ensure human rights conformity (no. 15).**
- **Human rights due diligence (no. 18):** Business should track and analyse its impact, remedy problems and monitor their effectiveness.

- **Report publicly on human rights impact and measures taken (no. 21).**
- **Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate (no. 23 c.):** This may be relevant for example in genocide campaigns (see discussion on Rohingya in Myanmar) or massive political repression.
- **Prioritize actions to address actual adverse human rights impacts, business enterprises (avoid delayed response that would make them irremediable):** This obligation has an impact on the speed of responses for which social media companies are often criticized.

In various fora most major businesses have committed to uphold human rights, for example in the Global Compact and under Corporate Social Responsibility commitments. The tech companies have restated such obligations in the Global Network Initiative (“ICT companies should comply with all applicable laws and respect internationally recognized human rights, wherever they operate.”).

An additional tension between political participation and Article 19 may lie in the fact that most elections are a national exercise and some restrictions may be justified to ensure that opinion is not massively influenced from abroad (in addition, opinion broadcast from abroad could evade campaign finance restrictions as well as national election coverage regulations). Indeed, companies like Facebook and Google have tightened rules and now require that political ads can only be bought by persons based in the country to which the ad is addressed.

Article 19 ICCPR stresses on the right to receive and impart information “regardless of frontiers”, while the European Convention on Human Rights notes that nothing in its articles protecting rights (expression, assembly, association, no discrimination) “shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.” (Article 16 ECHR).

Discourse free of “manipulative interference” or without “undue distortion” is a wide, rather than a precise standard. There are obvious cases that clearly seem to fall under it: When a Russian agency that is close to the government pays advertisement in the US that supports extremists right- and left-wing causes, it seems clear that it is designed to manipulate the public debate in order to create extreme polarisation. However, most issues are less clear.

The problems of discourse on social media are complex from a human rights perspective:

- **Targeted ads/dark ads:** It is not clear whether the possibility of targeting political ads at users, which other users do not see,

affects the right to political participation. Do they represent in some ways an undue manipulation, especially when based on psychological profiling? Certainly they need to be looked at from the angle of election campaign financing provisions. Otherwise targeted ads are mostly considered a problem of civil (rather than political) rights, for example when specific ethnic categories are targeted with job ads. It is noteworthy however that Facebook has accepted their relevance to the integrity and transparency of elections in principle and changed its policy. Users should now be able to see who posted an add and allow everybody to search an archive of political ads (at the time of writing it only seems to show US and Brazilian political ads).

- **The use of social bots** (i.e. automated accounts): Social bots are used for many purposes that do not raise concerns (car navigation or banking for example), especially because they are transparently automated speech. Bots become problematic when they conceal the fact that they are automated and used to artificially inflate engagement on social media, for example pretending that there is wide public traction on an issue. Given that public engagement not only influences how users may look at an issue (“if so many people are concerned, maybe I should too?”), it may also influence how prominently stories are posted in a newsfeed. The more engagement a story has, the higher it will be posted with more people. Facebook and other social media companies have increased their efforts to close down fake accounts, but the struggle between those who create political bots and

those who try to detect and close them resembles an escalating arms race. “The next generation of bots is rapidly evolving”, notes an analyst of technology and politics “Owing in large part to advances in natural-language processing—the same technology that makes possible voice-operated interfaces like Amazon’s Alexa, Google Assistant, and Microsoft’s Cortana—these bots will behave a lot more like real people.”¹¹

- **Paid Trolls** are human beings who promote a certain agenda on social media for a client. Like bots, they represent a manipulation of discourse because they give an impression of a widely held public mood, when in fact they only represent the political interest of the person or organisation that pays for them. They are comparable to the ‘claqueurs’ in the Paris Opera in the 19th century, who were paid to promote or to discredit performances. The Oxford Internet Institute notes: “We found reports of state-sponsored trolling campaigns targeting political dissidents, members of the opposition, or journalists in 27 of the 48 countries in our sample.”¹²
- **Falsifications:** Focussing on misinformation in elections, the most relevant aspects would be false news stories that can have a significant impact on electoral choices or behaviour (a false story about violence may deter voters from going to a polling station). Such stories can be intentional and potentially highly

harmful, such as the ‘leaking’ of a manufactured document that suggested that Emanuel Macron had a secret offshore bank account right before the French Presidential elections. Likewise, they may not have a political intention, as was the case of the Macedonian fakes news sites that suggested before the US Presidential elections that Donald Trump’s candidature had been endorsed by the Pope. The intention behind the story was purely commercial (to attract many viewers and sell advertising space), but its harm may have been much higher than that of many politically motivated false stories (900,000 Americans read the story). In this area too, there are country-to-country variations. In a survey 49% of Turkish respondents and 42% of Hungarian respondents indicated that they were exposed to completely made-up stories in the previous week, while in Denmark and Germany the number was 9%.¹³

- **Hate Speech/Defamation:** Hate speech is often part of a systematic attempt to suppress certain opinions or political dissent. Hate speech may intimidate people to withdraw from social media discourse or to avoid certain subjects and opinions.¹⁴ It may also spill over beyond online discourse. For example, it may intimidate not to attend rallies or going to vote. The concept of ‘hate speech’ is contested. Although it has a basis in international law (see for example Article 20 ICCPR), its legal contours are often described without precision and it can be abused to suppress freedom of speech.

11 Lisa-Maria Neudert, Future Elections may be swayed by intelligent, weaponized chatbots, *Technology Review*, August 2018, <https://www.technologyreview.com/s/611832/future-elections-may-be-swayed-by-intelligent-weaponized-chatbots/>

12 Supra footnote 3, page 11

13 Supra footnote 2

14 See for an in-depth analysis: *Intimidation in Public Life, A Review by the Committee on Standards in Public Life*, UK Parliament, December 2017

- **Abuse of User Policies:** While social media companies have increased their attention to content, user policies have been perverted for disinformation purposes. For example, “bots are being used to report legitimate content and accounts on a mass scale, so that social media platforms automatically suspend accounts or remove content until it can be reviewed by a human moderator.”¹⁵

National Laws on Social Media in Elections

Increasingly social media are specifically regulated in relation to elections. Examples include Bhutan, India, New Zealand and the UK.

Bhutan

The election commission of Bhutan/Office of the Media Arbitrator put the public and all election stakeholders on notice that all conduct on social media will be monitored and that candidates or their representatives must abide in social media speech as much as elsewhere abide by the election code of conduct and relevant legislation. It highlighted in particular that “Third Party Election Advertising conducted under false identity by the contesting Candidate, Party or Representative or any individual shall be regarded as a criminal offence and prosecutable under the Electoral Laws.”¹⁶

The notice is noteworthy for two reasons: It explicitly punishes false identity, which would in-

clude operating social bots. And it suggests that the Election Commission/Office of the Media Arbitrator will monitor social media discourse systematically.

India

The Indian election commission issued instructions¹⁷ to candidates on the use of social media including: The notification of all accounts of a candidate to the election commission; pre-certification of social media ads by the Commission (in line with pre-certification of ads in other media); costs for social media advertisement need to be included explicitly in the campaign cost statements of candidates. The Commission reasonably extended obligations that already existed to social media. There is no reason why they should not also apply on social media. The official notification of candidate accounts by candidates may help to identify and bloc fake candidate websites.

New Zealand

The Electoral Commission of New Zealand published an overview of rules that apply to voters using social media. They include: If a voter expresses views on behalf of a party, election advertising rules may apply; voters should not make and post selfies in ballot booths or photos of ballot papers; on election days no encouragement to vote in favour of a party of candidate should be posted.

¹⁵ Supra footnote 3, page 6

¹⁶ Post of the Election Commission of Bhutan/Office Of The Media Arbitrator on Use Of Social Media In Election, 26 February 2018: <http://www.ecb.bt/?p=5714>

¹⁷ Election Commission of India, 23 October 2013, https://www.eci.nic.in/eci_main1/current/SocialMedia_CI25102013.pdf

United Kingdom

The Electoral Commission of the UK compiled a report with recommendations on how it could better full-fill its role in relation to social media in elections. While these recommendations have not been turned into law yet, they offer a glimpse of where regulation may be headed.

Among other measures the Commission recommends:

- That it may request information from any person who may have relevant material, such as digital campaigners (as opposed to only those who are registered election campaigners)

- Increase the maximum fine for breaking campaign finance rules (which is currently set at only 20,000 GBP)
- Make big providers like Facebook or Google apply UK election campaign rules; consider restrictions to buying ad space to national organisations

These proposals show that many questions of law enforcement and internet governance will increasingly be discussed and treated as core questions of democratic elections.



IV. EXAMPLES OF OBSERVING SOCIAL MEDIA/ NETWORKS IN ELECTIONS

A distinction needs to be made between observation of social media in order to judge discourse and monitoring in order to gain information for other aspects of election analysis such as tracking violence or assessing how an Election Management Body is communicating with the electorate. In the latter field several civic tech initiatives have been launched. Indeed, social media offer a rich resource of data that can complement other information on all kind of issues. For example, if the word ‘fraud’ does not show up in significant quantity in social media conversations, it is unlikely that the electorate has a concern about fraud (whether that is justified or not).

The following projects are noteworthy from having looked specifically at social media conduct in elections:

DEMOS 2005 Nigerian Elections

DEMOS purpose was not specifically to add to election observation methodology but to test a “a novel way to research and understand attitudes, trends and media consumption”¹⁸. The team focused on Twitter and collected 12,4 million En-

glish-language tweets from 1,24 million users during one month in the run-up to the elections as well as almost 2 million comments in Facebook. The data was automatically classified and among the main findings was the fact that hate speech was not much used, but that there was a wide-ranging discussion of electoral violence. The report points out that social media monitoring can effective in detecting rapidly rumours. As the spreading of rumours and false stories is part of the disinformation playbook, this aspect of monitoring is particularly relevant.

The DEMOS study is recommended reading to better understand the technical challenges and solutions to analysis of social media data and a discussion on their overall use.

Stiftung Neue Verantwortung, ‘Fake news’ study in the German elections, 2017¹⁹

The Stiftung monitored during six months in the run-up to the German general elections of 2017 the phenomena of ‘fake news’ (better called fabricated or manipulated content) and their im-

18 Page 4 of the Report.

19 https://www.stiftung-nv.de/sites/default/files/snv_fakten_statt_fakes.pdf (only in German)

pact. For this purpose, they selected the most prominent cases that had been identified by fact-checking organisation and monitored the spread of these ‘news’ in social networks. They found that these fabricated news mainly originated and resonated with voters of the far-right party Alternative für Deutschland and sometimes originated from mistakes made by professional journalists. The project added a survey of voters to see whether they remembered these stories; again, voters of AfD were more likely to remember and to believe these stories.

The study offers interesting insights for election observers: First, even only monitoring one aspect of disinformation (i.e. manipulative content), requires significant resources. The organisation worked with a social media analysis firm to analyse the spread of each of the false stories and it polled voters after the elections to understand the effect of these stories. Second, the study relied on an existing ecosystem of fact-checking organisations and social media analysis firm. Such a system is not available everywhere. Third, while in Germany false stories did not significantly influence the elections, in other elections they may. Thus, prudent comprehensive monitoring would follow disinformation to determine after an election whether it was marred by disinformation or not. But the human and technical resources needed would be significant.

Digital Rights Foundation Pakistan

The Digital Rights Foundation, with the support of Democracy Reporting International and the EU’s Supporting Democracy project, monitored social media during Pakistan’s 2018 general elections. The project retrieved around 1.4 million tweets related to the election and tracked the pages of 40 women politicians and candidates,

as well as the pages of three major male politicians, collecting 10,455 posts and over 1 million Facebook comments. The project focused on determining the quality of information circulating on Twitter, the participation and experience of women online, attempts at political manipulation, and political advertising.

The Transparent Referendum Initiative, Ireland

In May, Ireland held a referendum on whether or not to repeal the 8th amendment of the constitution, a provision which restricted access to abortion. In the run-up to the referendum, the Transparent Referendum Initiative asked Irish volunteers to install a plug-in called WhoTargetsMe on their web browsers, which collected over 1,000 Facebook ads related to the referendum. The online database brought transparency to the process and helped to uncover who was advertising, the content of their ads, and additional interactions data. This method could be replicated by other civic tech organisations elsewhere.

Two points are noticeable about civic tech/ civil society initiatives: First, not many have tried to address disinformation aspects on social media in elections. Indeed, data journalists from The Guardian or BuzzFeed have been at the forefront of uncovering aspects of disinformation in electoral campaigns. Academic research has also contributed to better understand how disinformation has worked. What has been often missing is the real-time monitoring and reporting on these which is something that typically election observers would do. Second, so far there have not been attempts to link up initiatives related to a given country in a given election. Beyond EU EOMs, more efforts could be undertaken to build such digital coalition ahead of critical elections.

V. MONITORING SOCIAL MEDIA: THE TECHNICAL SIDE

As highlighted, the threats to a democratic discourse on social media are numerous and complex. The major question then is what should election observers focus on? For many observer groups this question can be answered by their specific mandate. Groups that focus on women rights may assess speech about female candidates, organisations that fight against hate speech track its occurrence, while fact-checkers typically monitor the speech of politicians or other persons of authority.

The Problem of 'Comprehensive' Monitoring

The question is harder to answer for full-fledged election observation missions, like EU EOMs, which have the mandate to *comprehensively* observe an electoral process.²⁰ Such an ambition meets several obstacles when facing the task of monitoring social media.

One problem is the quantity of data. On social media the nation is talking to itself. Millions of

users post their views and comments on political issues. Democracy Reporting International monitored Twitter during the German federal elections of 2017 and tracked activity by thousands of suspicious accounts during the elections, gathering almost more than four million tweets. This amount of data can only be analysed using specific programming languages, or ready-made software, which already limits the depth of analysis. The data DRI gathered was based on a single hashtag (#BTW, which referred to the Federal Elections). Adding additional hashtags, such as #Merkel and #Schulz, would have added millions of more tweets to the dataset. And that is only Twitter. Facebook is much more widely used in Germany, and when only focusing on data from Facebook pages of three major political parties, DRI retrieved 30,073 posts and over three million comments. In other words, the potential universe of public or semi-public potential discourse has so expanded in social media to make it impossible to gain a comprehensive understanding of what is happening. The size of the data generated by social media therefore requires observers to have specific, focused questions to ask to learn about the impact on elections.

²⁰ Communication from the Commission on EU Election Assistance and Observation, COM(2000)191

Quantity is one problem, but there are also technical obstacles. Twitter remains one of the most well-studied social media platforms because of its accessibility for researchers. There are several ways to retrieve data from social media platforms, but by far the most efficient and the only realistic method is to scrape (collect) data by connecting to a platform's 'Application Programming Interface' (API). The API allows an external computer to acquire data from the social media platform. Social media APIs differ in their rules for access in terms of quantity or type of data.

Some APIs may provide data that spans months or years, whereas others offer only data as far back as one week, and only a sample of all data; the costs to access larger amounts of data can be prohibitive. Some platforms' APIs offer meta-data about user profiles, their followers, etc., whereas other anonymize user identities associated with data such as comments or other user engagement.

API restrictions increase

While the use of APIs for social science research or civic engagement is positive, companies have also used APIs to collect user data and design their campaigns. Cambridge Analytica's infamous storage of large data on American voters was done through Facebook's API. In the wake of the scandal, Facebook has greatly restricted access to its API and disallowed many of the programmes that were typically used by social science researchers. In addition, many commercial programmes have also been affected by this change.

The Move to Chat Applications

An additional problem is that a lot of discourse is moving from social media to chat applications. The Oxford Internet Institute note: "Chat applications such as WhatsApp, Signal, or Telegram are an important medium by which individuals share news and information, coordinate political activity, and discuss politics. In this year's report, there is growing evidence of disinformation campaigns taking place on chat applications. We have seen evidence of social media manipulation campaigns on chat applications in around a fifth of the countries in our sample, many of which are from the Global South, where large public groups on chat applications are a widespread phenomenon."²¹

Chat applications like WhatsApp are not closed to monitoring, as a Finnish study shows²², but monitoring would be difficult for non-public WhatsApp groups.

Ethical Questions

Ethical aspects of social media monitoring need to be considered. Given that such monitoring would follow a large number of users, 'informed consent' cannot be sought. Indeed, users of Facebook or Twitter may have given informed consent (or changed their settings) for their public data to be accessible through the API. Importantly only public data should be scraped. Thus, for example it may be problematic to monitor WhatsApp communications in closed

²¹ Supra, footnote 1, page 6

²² K. Garimella, G. Tyson, WhatsApp, Doc? A First Look at WhatsApp Public Group Data, it can be downloaded here: <https://users.ics.aalto.fi/kiran/content/whatsapp.pdf>



groups, even if they are large (it is possible for NGOs or investigative journalists to do so). Public WhatsApp groups could be monitored.

Furthermore, the data should only be used in anonymous ways, with no data of individuals being divulged. The exception would be persons of public interest, like politicians, whose statements EOMs may cite, whether they are made in TV or on a public Facebook page. Lastly, it is important to keep in mind that social media users are not a representative sample of the population. The social, geographical and demographic composition of social media data does not coincide with that of the overall population.²³ Generally, research in this area should comply with professional ethics for social science research that many countries have adopted.

23 J. Mellon, C. Prosser, "Twitter and Facebook Are Not Representative of the General Population: Political Attitudes and Demographics of British Social Media Users," *Research & Politics* (2017).

VI. CONCLUSIONS

Imagine that an upcoming election somewhere in the world is very tight, with two competitors running neck on neck. A single percent point change in support can determine the outcome. Shortly before election day a massive disinformation campaign is run on social media against the candidate who ultimately loses. Such a scenario is not far-fetched and possibly more likely today than traditional ballot-box stuffing which election observer are trained to detect. Yet the observers would have little to say. Quite possibly the whole extent of the disinformation campaign would only be uncovered months later, if at all.

In order to catch up with this reality and in view of the relation that disinformation risks have to the international human rights framework (which provides the reference point for international observers), EOMs have to step up their response, even if they cannot hope to have a comprehensive view of what is happening on social media.