



TALKING POINTS
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SECURITY IN ELECTIONS

COUNCIL OF EUROPE

Date: Thursday April 19th, 2018

Time: 9:30 –11:00 AM

Format: Plenary Session (Warm up discussion and 4 interventions in English).

Title: **#Democracy2018: Institutional Responses to E-challenges**

Topic: Political Rights Vs Minimum Democratic Standards: The Role of the Mexican Electoral Tribunal in Addressing the Rise of Fake News During Elections.

Place: Gamle Logen Palace. Oslo, Norway

Participants:

- Oliver Kask, President of the Council for Democratic Elections and Member of the Venice Commission
- Alexander Segel, Head of Cybercrime Division of the Council of Europe.
- Ardita Driza Maurer, Lead Expert of the Council of Europe’s Ad hoc Committee of Experts on legal, operational and technical standards for E-voting.
- Rafael Rubio Núñez, Deputy Director for Studies and Research at the Centre for Political and Constitutional Studies.

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Introduction

As David Kaye, UN Special Rapporteur for Freedom of Expression once stated: “**today, to be disconnected from the web is to be silenced** and every issue of freedom of expression is amplified online.”

Just as universal suffrage came to be a democratic imperative during the last century, our democracies now ought to have more than just a strong judicial system, fair elections and accountable institutions; we also need a free Web.

Freedom of Expression is “a fundamental right recognized in the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59 (1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the (UNESCO) and the International Covenant on Civil and Political Rights.

However, foreign intervention in elections, through the use of social media, has become a concern for democracies. This poses challenges both for democracies and for security reasons. In order to design strategies, as EMBs and Constitutional Courts, that balance the right of freedom of expression with the necessity to ensure democratic principles and national interests, phenomena such as social networks, fake news, and post truth must be examined and understood thoroughly.

The Internet as a medium for civic engagement

According to the latest report by the Web Index, for the second year in a row, the Internet, and more specifically social media has played a significant role in enabling social and political action, amplifying previously marginalized voices.

According to Digital in 2017 Global Overview, half of the world's population now uses the internet, and the number of social media users grew by more than 20% over the past 12 months. There are now 2.7 billion of "active social media users."

In the old days, information was passed down from the specialized sectors to the general population. Now, **citizens can instantaneously talk to each other, speak up, organize and share their concerns with the rest of the electorate.**

This digital transformation is recasting the relation between States and citizens. **Now, citizens that engage in social media use the Internet to organize and demand better services, more transparency and meaningful participation in the political arena** (Santiso, 2018).

Armed with nothing more than a smartphone, citizens all over the globe are now able to shape global perceptions, position topics in their national agendas and **foster political activism.**

There are countless notable examples of this; from the **Egyptian** teenagers who used Facebook to rally protesters to Tahrir Square, eventually toppling the Mubarak regime, to the influence of fake news on the outcome of the **Kenyan** Presidential Election, to the **Chileans** who campaigned online to make overseas voting a key election issue with “Haz tu voto volar” and “Verificado2018,” in **Mexico**.

Social media has revolutionized the way people interact and exercise their freedom of expression and information as well as related fundamental rights (Council of Europe, Resolution 1987 [2014]).

Nevertheless, with great freedom comes great responsibility → ranging from security issues to misinformation and the dissemination of fake news.

In its beginnings, the Internet was hailed as an omen of equality and liberty. However, with the “democratization” of content production and the centralization of online distribution channels such as Twitter and Facebook, one unintended consequence has been the **proliferation of fake news.**

Even though this phenomenon has existed since the dawn of the printing press, over the last few years, **the practice has become significantly more widespread and technically sophisticated, with bots, propaganda producers, fake news outlets exploiting social media** and search algorithms that ensure high visibility and seamless integration with trusted content, **misleading** large audiences of news consumers, and more importantly, **voters.**

According to Freedom House’s latest report, **manipulation and disinformation tactics played an important role in elections in at least 17 other countries over the past year**, damaging citizens’ ability to choose their leaders based on factual news and authentic

debate. This has an impact on the legitimacy of democracy itself and poses security challenges.

Be it governments or non-State agents around the world, all have dramatically increased their efforts to manipulate information in social media with the intent of distorting online discussions and sometimes even suppressing political dissent.

Cases like **Venezuela, the Philippines** and **Turkey** where State agencies employed armies of “opinion shapers” to spread government views and counter critics on social media or the US, where political campaigners at **Cambridge Analytica** helped themselves to the private data of 87 million Facebook users have become prevalent features of our times, especially during electoral processes.

Unlike more direct methods of censorship, such as website blocking or arrests for internet activity, **online content manipulation is difficult to detect and it is also more difficult to**

defeat, given its dispersed nature and the sheer number of people and bots employed for this purpose.

A recent study by the Massachusetts Institute of Technology (MIT) tracked 126,000 stories on Twitter by roughly 3 million people from 2006 to 2017. They found that:

- False claims were 70% more likely than the truth to be shared on Twitter
- True stories were rarely retweeted by more than 1,000 people, but the top 1% false stories were shared by 1,000 to 100,000 people.
- It takes true stories about 6 times as long as false stories to reach people.

Over the past five years, there has been an upward trend in the amount of cyber threat activity against democratic processes globally. So far, in 2017, 13% of countries holding federal elections have had their democratic process targeted.¹

¹ Cyber Threats to Canada's Democratic Process. <https://www.cse-cst.gc.ca/en/democratic-process-processus-democratique/page2>

As a consequence, **a practice that has since gone global presents a major threat to democratic systems** and to the notion of the internet as a liberating technology.

In the words of **Francis Fukuyama**, this “post-fact world” fueled by new technologies is a challenge to democracy because:

- We believe in the authority of facts, even if few of us are in a position to verify them, because “there are impartial institutions tasked with producing factual information that we trust”.
- However, “[o]ne of the more striking developments of 2016... was the emergence of a “post-fact” world, in which virtually all authoritative information sources were called into question and challenged by contrary facts of dubious quality and provenance”, such as fake news.
- The “belief in the corruptibility of all institutions leads to a dead end of universal distrust” and “this is where the democracies are headed for trouble”.

- According to Fukuyama, no democracy will survive “a lack of belief in the possibility of impartial institutions; instead, partisan political combat will come to pervade every aspect of [our political] life”.

Institutional safeguards to these challenges

Given the potentially devastating effects of information manipulation on democracy and civil activism, it is for us, as representatives of Electoral Bodies, to **come up with solutions that ensure the necessary legal, economic and political conditions for both internet freedom and fair elections to exist and develop.**

To sum up, the main challenges for modern democracies are a) combating content manipulation, b) guarding freedom of speech and c) restoring trust on elections and democracy. This poses a few questions for EMBs:

- How to successfully counter content manipulation without undermining internet and media speech?

- Must regulations be strengthened to ensure that political advertising is transparent?
- What is the role that tech companies must play regarding bots and fake accounts, and how can EMBs ensure this role is fulfilled?

These challenges need state action that guarantees political rights as well as minimum democratic standards. The role of EMBs must be to strengthen the legitimacy of elections and thus, to strengthen democracy itself.

Actions undertaken by the Electoral Tribunal of Mexico

Both freedom of expression and fair elections should be at the heart of every regulatory regime. In a country with 70 million internet users whose main activity online is social media, acting against disinformation on the internet will be key for the proper development of the electoral process (Asociación de Internet, 2018)

However, the biggest challenge is striking a balance between defending freedom of speech, promoting civic engagement and finding ways to regulate social media in order to guarantee stability and fairness in electoral processes.

The Electoral Tribunal has found such a balance in **the standard of permissiveness and spontaneity**. In this sense, the TEPJF has issued various judgements, which underline the necessity of taking into consideration the particularities of the internet as a tool to potentiate the protection of the freedom of speech; the spontaneous nature of publishing contents on social media; and the removal of any potential limitations on the political involvement of citizens through social media².

Nonetheless, it has also ruled that “social media is not a space located outside the parameters established by the Constitution”³. Political propaganda, for instance, must not contain expressions that imply defamation and slander. In this case, freedom of speech

² Jurisprudence 17/2016. Jurisprudence 18/2016. Jurisprudence 19/2016.

³ SUP-REP-123/2017.

can be limited, if the defamation/slander is clear. In case of doubt, the resolution must favor the freedom of speech⁴. Furthermore, the Tribunal has ruled that the prohibition for advertising political propaganda during the 3 days prior to the election (blackout period), must also apply to social media (Thesis XIII/2017).

Conclusion

In the past couple of years, foreign intervention in elections, through the use of social media, has become a concern for democracies. Technological resources such as low-cost digital espionage campaigns, paid users and bots, selective disclosure of information or creation of fake information has changed the rules of the game during electoral campaigns. As a side effect, this has eroded confidence in democratic governments.

In Mexico –as in many countries around the world- this is quite a new topic and current electoral regulation is developing. However, if democracy is to be protected (along with its key components of

⁴ SUP-RAP-192/2010 and 193/2010 and accrued, SUP-RAP-194/2010 and SUP-RAP-0119/2011.

freedom of speech and fair elections) this novel sphere of human communication must be understood, protected and regulated. That is why EMBs and constitutional courts must act in order to face these challenges.

The Electoral Tribunal of Mexico is committed to safeguarding freedom of expression and considers that social media platforms can foster a more democratic, open and plural exercise of political rights. However, this position must be nuanced in order to protect other democratic principles such fairness in the electoral campaign and the right to information.

Protecting the constitutional framework while empowering the freedom of speech requires a delicate yet necessary intervention of the constitutional courts. The right balance between those two is key for the legitimacy of institutions and, therefore, for the survival of democracy in a “post-fact world”.

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