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MAY 10 POLLS: NOT JUST SYSTEM GLITCH, BUT POLICY FAILURE

The right to public information suffered with Comelec's lack of transparency. The poll body failed – and continues to fail – to meet the transparency requirements of the election system by its intransigent and unexplained refusal to deny citizens' groups access to vital election documents. Its lack of transparency left majority of the electorate misinformed and uninformed, duped by the illusion about automated election modernizing democracy and weeding out fraud.

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The advocacy for credible elections in the Philippines has been daunting – but also rewarding. One of the biggest hurdles in this advocacy is engaging the Commission on Elections (Comelec), the country's prime election manager, so as to make sure that its claim of making the recent automated election transparent, credible, and accurate works. It is the least that can be done to ensure that the people's sovereign will is expressed in a country that is still struggling to make real democracy work.

Because a modern albeit untested technology was being adopted for the May 10, 2010 election, an inevitable clash between those who aimed to enforce it by all means based on the doctrine that the Philippines should catch up with "modernization" and those who believe that modernizing demands caution, rigorous testing, simulations, well-grounded certification, and a highly-developed political culture. The new election law, RA 9369, looks fair - and also stringent. With its technical provisions having been proposed by IT scientists, practitioners, and tested poll watchers the law is strong on the need for pilot tests; high standards of accuracy, reliability, security, and transparency; and, more important, extensive voter education and training by all election managers, inspectors, and technicians.

As a policy research institution, CenPEG monitored the 2010 automated election system's implementation from the time it was "pilot tested" in the August 2008 Autonomous Region for Muslim Mindanao (ARMM) automated polls to its final launch last May 2010 where 17,000 elective positions, including the presidency, were contested by about 85,000 candidates in synchronized national and local elections. CenPEG's election-day monitoring reports bared widespread incidence of technical glitches, voting machine breakdowns, transmission failures, back-up batteries overheating, non-performing satellite transceivers, millions of voters queuing from 3-9 hours to vote, and other irregularities. To validate the incidence reports, researchers farmed out to the provinces to conduct case studies and interview key informants from the local Comelec, poll inspectors, hired IT technicians, poll watchers, voters, candidates, and officials from the Department of Science and Technology (DOST). Accounts of election glitches were reconstructed; official papers, documents, and evidences were collected for analysis.

Information withheld

Research has a strategic value for national development and public affairs. It seeks out facts; facts are sourced through various means. When information is being withheld by official sources, questions are left unanswered and truth is compromised. In the course of doing research, CenPEG came face-to-face with top Comelec officials and advisers where simple technical questions elicited no response or mere quizzical stares, and critical inquiries are dismissed as untimely or premature. Research curiosity turned into inquisitiveness, and criticalness into persistence in unearthing more facts. But Comelec behavior turned from stonewalling to labeling and agitated anger. Intolerant of contrary views and unable to produce information – such as the vital election source code which the law says should be reviewed by independent groups – Comelec officials also became more evasive and stalling. Illusions replaced transparency as voters and media were told to "trust the machine" or, failing so, to leave fate to God once an "unforeseen election disaster"

strikes. The automated election was touted as a "dream poll" and a medium for "modernizing democracy" – all-too familiar marketing tools.

One could detect a myopic belief that importing a voting machine is already modernization when modernization itself is a process of scientific development and a high socio-political culture that is able to produce indigenous modern technology. Worse, the automated system was equated with clean elections when, in fact, regardless of automation traditional fraud in a country like the Philippines has the power to hijack the voter's sovereign will – and the country's future. Who controls the machines, controls the vote. Indeed it was disturbing to hear a top Comelec official who, in trying to allay fears of a source code manipulation, went on to prescribe an "anti-virus" antidote.

Fortunately, in many instances, CenPEG received information from unofficial sources, high and low – slipped from under the door, from anonymous informants, emails, and courier.

Precisely due to ill-preparedness, the failure to meet deadlines such as machine manufacturing, ballot printing, and voter education redounded to cutting corners and foregoing other critical requirements. Critical security, transparency, and verifiability features that would have guaranteed some credibility and accuracy to election results were either ignored or removed. Results of failed or inadequate mock elections and field tests with a clear warning that Smartmatic, the technology provider, had a lot of catching up were all but ignored. By the time the disastrous final testing and sealing (FTS) of the machines happened on May 3, time was slipping away as the countdown to election day was drawing to a close.

In the end, the major structural flaws were disturbing, among them: The required change in management was wanting as shown in the failure to make implementation compliant with the law; in the lack of systematic data on the availability of infrastructures that will support poll automation (power supply, road and water networks, telecommunication connectivity of the voting centers); poor training extended to members of the Board of Election (BEI) inspectors; no effective system in crowd control under the precinct clustering; and lack of competent IT technicians (even non-ITs were hired indiscriminately).

CenPEG report

In the synopsis of its final report which it presented in a post-election summit (PES) last Oct. 5 (dubbed October PES) organized by AES Watch, CenPEG revealed: There was a high incidence of technical hitches, blunders, voting procedural errors, and other operational failures throughout the country. These can be attributed to the defective automated system adopted by Comelec - the lack of safeguards, security measures, as well as timely and effective continuity/contingency measures (software, hardware, technologies, and other system components) that proved damaging to the accuracy, security, and reliability of election returns. Comelec's seeming fixation for "speed" ran the risks of removing vital mechanisms, short-cutting procedures, glossing over voter's rights and the principle of "secret voting, public counting" and, inevitably, bypassing strict constitutional and legal requirements. Stripped of its vital organs, the automated election system (AES) that was harnessed for the May 10 polls was not only vulnerable to various glitches and management failures but also favorable for electronic cheating including possible pre-loading of election results. (Read "The CenPEG Report on the Many 10, 2010 Automated Elections: A Synopsis," www.eu-cenpeg.com and www.cenpeg.org)

Indeed, several of the 100 election protests filed with Comelec so far involved alleged electronic cheating such as switching of CF cards, unexplained sudden stoppage of transmissions, ballot pre-shading, and other reasons. The report also dared Comelec to explain why it was showing "fast" election results at its national canvassing monitors when delays, interruptions, and glitches were happening in many clustered precincts nationwide.

The challenge of establishing solid proofs and empirical data to verify automated cheating – including a possible pre-loading - has been impeded by the national poll body's unexplained refusal to disclose vital election documents – all 21 of them – that were long requested by CenPEG and other citizens' groups. The disclosure of these documents should help validate Comelec's claims of election "success" and dispel increasing allegations of electronic rigging. However, the more intransigent Comelec is in refusing to make this public information available the stronger public concerns there will be that the poll body is hiding something.

Accountability and policy of exclusion

Under the circumstances, Comelec should be made accountable for making decisions that are inconsistent with the RA 9369 requirements involving "the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people." The poll body also failed to adopt "the most suitable technology of demonstrated capability taking into account the situation prevailing in the area

and the funds available for the purpose."

The procurement law and RA 9369 should be upheld to test Comelec's accountability with regard to the still-questionable contract with the foreign consortium Smartmatic; on the real ownership of the vital source code, programs, and systems; the absence of public bidding and other requirements in other transactions (logistics, voter education, secrecy folders, UV scanners, etc.). Comelec should explain why it chose to outsource the election automation when the Constitution and RA 9369 explicitly provide for the use of Filipino science and technology and the adoption of a technology appropriate for the country's "actual conditions." Was the country's sovereignty compromised when Comelec virtually abdicated its responsibility as election manager in favor of a foreign company? Were the voters' sovereign will expressed freely in the absence of features that guarantee secret voting and public counting, verifiability, and auditability – not to mention the fact that election results may have been tainted by the absence of accuracy and security safeguards?

Moreover, the right to public information suffered with Comelec's lack of transparency. The poll body failed – and continues to fail – to meet the transparency requirements of the election system by its intransigent and unexplained refusal to deny citizens' groups access to vital election documents. Its lack of transparency left majority of the electorate misinformed and uninformed, duped by the illusion about automated election modernizing democracy and weeding out fraud.

To quote the president of TI-Philippines, Judge Dolores Espanol, until CenPEG and AES Watch publicized their appraisal of what happened on election day the truth about the automated election system dysfunction was hidden by Comelec from the public.

"The Comelec has been the most un-transparent in the whole election exercise by not disclosing vital election documents," she said. Some observers have described this lack of transparency as a "criminal act."

Aggravating this lack of transparency is a policy of exclusion maintained against critics from all walks of life including ITs, academics, poll watchdogs, and people's organizations. Such policy of exclusion only exposed Comelec's closed-door policy against public engagement that is contrary to the very Constitution the poll body promised to uphold – that governance is a partnership between the state and "civil society", of all stakeholders.

Nevertheless, the battle for the election source code scored a victory when, on Sept. 21, the Supreme Court (SC) in its ruling on CenPEG's petition for mandamus directed the Comelec to release the source code for independent review by the petitioner and other independent parties. David A. Wagner, the principal investigator of the source code review for California and computer science professor at the University of California-Berkeley, congratulated CenPEG for the victory but asserted, as the SC decision says, that its release should be "unrestricted."

The SC's favorable ruling on the source code review is a breakthrough - the first for a country in the whole world. On this case, the high court's action on CenPEG's request for mandamus is a distinct service to the Filipino people's quest for a democratic and credible election.

And if there is anything positive about the whole exercise it is that it forced millions of people, including teachers, voters, citizens groups, and poll watchers to intervene and push through with the election.