

Right to know should prevail in automated election

A major victim in this electoral exercise is the people's right to know. By consistently imposing rigid guidelines and restrictions to “make available the source code for independent review,” the Comelec is actually obstructing the exercise of the citizens' right to know that would have ensured public oversight and validation of a system pre-judged as reliable through unfounded claims.

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Absent any decision by Congress, particularly the Senate, on current bills endorsed by Malacanang calling for its postponement the next election for the Autonomous Region of Muslim Mindanao (ARMM) will be held on August 8 this year. If this is the case, the Commission on Elections (Comelec) will use the election technology provided by the Venezuelan marketing company, Smartmatic, and its Filipino partner, TIM.

As in the first automated elections of May 10, 2010 the Comelec, now headed by former election lawyer Sixto Brillantes, is again short-cutting the procedure and is making decisions under a shroud of secrecy. The contract that is being prepared for the purchase of Smartmatic-TIM's 5,500 precinct count optical scan (PCOS) machines under the 2009 contract term “lease with option to purchase” at a cost of almost Php2 billion is said to be bloated. The purchase contract will also tie Comelec's hand to using the same questionable technology provided by Smartmatic in 2013 and other future elections.

Aside from this, the Comelec's decision to buy the company's PCOS machines raises the issue whether such action will be bypassing legal requisites. The law binds the Comelec that any decision to re-use the technology implemented in the May 2010 automated elections should be done in consultation with the Congress through its Joint Congressional Oversight Committee (JCOC) on the automated election system (AES). The JCOC itself is to evaluate the conduct of the first automated polls before reaching any decision concurring with the re-use of the same technology – or the adoption of an alternative system. The legislature can use its budgetary powers whether to

justify any decision by the poll body on the use of election technology in the coming ARMM elections. Right now, however, the Comelec is not ready to face the JCOC on this matter precisely because the poll body itself has not done its own homework in assessing the first automated polls – or is hiding vital facts.

In its June 20, 2010 report, the Comelec Advisory Council (CAC) then chaired by Ray Anthony Roxas Chua, asked the poll body not to lease or buy the Smartmatic PCOS machines for future elections. Likewise, the Comelec has downgraded its earlier claim of “resounding success” of the poll automation to “qualified success” admitting, albeit belatedly, that the Smartmatic technology indeed had errors. The Venezuelan company promised to correct the errors and the program is to be re-certified by SysTest Labs this May. But any IT professional would say that computer technology should be 100 percent perfect otherwise it should be junked altogether.

AES Watch

Which is what the AES Watch, a broad citizens' election watchdog, that includes the country's key IT practitioners, security experts, and computer scientists and gurus have been calling for. Citing its member-organizations' independent assessments – notably CenPEG's 650-page report – AES Watch states that the Smartmatic-provided PCOS technology is non-transparent, dismally lacks security safeguards, is non-auditable, and is full of inaccuracies. In a statement it issued last May 6 to mark the first year of the May 2010 automated elections, AES Watch

said that the election technology was critically defective not only in terms of software and infrastructures but also in election management and legal implementation. In particular, it found the computer software as full of errors and bugs, and the 99.6 percent accuracy rate of the Comelec's random manual audit (RMA) falling radically short of the required 99.995 percent accuracy rate, hence, unfit for use in any election.

Given the clear deficiencies of the Smartmatic election technology and the still unresolved issues, including Comelec's refusal to disclose at least 21 vital election documents including the source code and transmission data, how explain the Comelec's intransigent policy to re-use the PCOS system? Independent election watch groups and IT professionals who are against its recycling aver that considering time constraint Comelec instead of using the Smartmatic technology can revert to the manual system for the ARMM elections where each of the region's 1.9 million voters will elect only three candidates – the region's governor, vice-governor, and a member of the regional assembly.

Has the Smartmatic-TIM lobbying gone full-scale to make sure that clinching the purchase deal will give the company a niche in the Philippines from where it can expand its market in Indonesia and the rest of Southeast Asia? Media reports indicate that a demolition job is in the works to attack groups and individuals who have exposed the deficiencies of the Smartmatic-TIM product.

The truth about the election technology supplied by the Venezuelan company was unearthed through painstaking and extensive studies done by CenPEG and other convening groups of AES Watch. None of the findings has been rebutted by either Comelec or Smartmatic-TIM. Leads that there might have been misrepresentation in the bidding when the real ownership of the computer technology belongs to another company, the Dominion Voting Systems - which is not a party to the contract signed with Comelec in 2009 – have not been denied, either.

Policy of non-disclosure

The assessments were made despite a policy of non-transparency and non-disclosure of public information maintained by the Comelec both under the chairmanship of ex-Justice Jose Melo and now under former election lawyer Brillantes. Until now, the Comelec's lips are sealed over the expenditures made from the P11-billion budget allocated by Congress for the May 2010 elections.

The Comelec had been asked time and again to prove its claim of “success” by publicizing its own objective assessment and releasing all election documents - to no avail. It has invoked “security” and “private intellectual property ownership” in imposing restrictions to the independent review of the source code by CenPEG and other independent groups and political parties. If the poll body really believes that the Smartmatic technology is secure and flawless then it should not fear its full scrutiny through an independent source code review. Likewise, “private intellectual property rights” cannot be invoked in a public political exercise such as election: The right to public information supersedes all claims to private property. Besides, the AES technology had been paid for by the voters through taxes. The Comelec should be reminded that its constitutional mandate is to protect the voters' rights most especially public information rather than a foreign marketing company's “bread and butter,” to use the words of its resident president. In the first place, why is a protective shield being given to this private company when it faces several complaints not only in the Ombudsman but also in election protests?

Major victim

A major victim in this electoral exercise is the people's right to know. From preparing for the May 2010 elections up to gearing up for the scheduled elections in ARMM this year, the promotion of the Smartmatic's PCOS as a reliable election tool has been made through aggressive multi-media marketing, lobbying, and spin doctors.” “Speed” was paraded as the yardstick for rating the poll automation a “success” while hiding from public view the well-documented widespread election-day technical breakdowns, transmission failures, inaccuracies, and other flaws. One year after the first automated election, Comelec has not taken up the challenge made by election watchdogs to prove its claim of “success” by releasing for public scrutiny key election documents including the source code.

Election is a public political exercise. In the May 2010 elections, the technology used was intrinsically non-transparent with every voter made to bear the burden of adjusting to the system even as it was stripped of verifiability features and safeguards that downgraded further its trustworthiness and auditability. By consistently imposing rigid guidelines and restrictions to “make available the source code for independent review,” the Comelec is actually obstructing the exercise of the citizens' right to know that would have ensured public oversight and validation of a system pre-judged as reliable through unfounded claims.

In the face of Comelec's intransigence but based on their findings, election watch groups led by AES Watch and its affiliated organizations are now pushing for new legislations that seek to enhance the election automation law. Soon to be formally launched is a national search for an alternative election technology designed by Filipino IT expertise so as to veer away from the dangers of outsourcing the country's election to unaccountable, profit-hungry foreign marketing firms.

There should be no illusion, however, that modern technology will guarantee a free election. Who controls the machine controls the votes. There are more daunting tasks that should be addressed to make the election democratic and these include a thorough reform of the Comelec to make it a credible and independent election manager. The cheating machineries of traditional political parties and oligarchs should be effectively checked. Until these issues are effectively answered, the people's right to equalize the election playing field and their freedom to choose a government that truly represents their sovereign voice will remain in paper only.

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