



AES Watch

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MANIFESTATION ON PREPARATIONS FOR THE 2016 ELECTIONS

BY: AUTOMATED ELECTION SYSTEM WATCH (AES Watch)

August 14, 2014

FOR: THE JOINT CONGRESSIONAL OVERSIGHT COMMITTEE on AES

HON. AQUILINO “KOKO” L. PIMENTEL III

Chair, Committee on Electoral Reforms and People’s Participation (CERPP)

and HONORABLE MEMBERS,

SENATE OF THE PHILIPPINES

Dear Sen. “Koko” Pimentel,

Respectfully submitting our Manifestation on the preparations for the 2016 elections. This paper also submits proposals on the election technology to be used for said presidential elections in the light of the country’s experiences in the 2010 and 2013 elections.

Respectfully,

NELSON J. CELIS

Spokesperson

AES WATCH

SECRET VOTING – PUBLIC COUNTING (SVPC)

1. Background

Republic Act (RA) No. 9369 Section 5 stipulates that the Commission on Elections (Comelec) is authorized to use either paper-based (CCOS or PCOS) or a direct recording electronic (DRE) election system for the process of voting, counting of votes and canvassing/consolidation and transmittal of results of electoral exercises. In the past ARMM elections, Comelec consistently used Central Count Optical Scan (CCOS) in 1996, 1998, and 2008 while the DRE technology was used only in 2008. The supplier of CCOS machines in 2008 donated their machines after the ARMM elections. Further, Comelec also decided to get CCOS machines in 2003 for the supposedly 2004 automated elections but those were never used.

In 2008, the Comelec Advisory Council (CAC) then headed by Sec. Ray Anthony Roxas-Chua recommended the use of Precinct Count Optical Scan (PCOS), DRE and CCOS. In 2010 and 2013, Comelec just adopted the use of PCOS machines of Smartmatic and the rest was history. In

AES Watch Conveners' shared concern: Transparent and Credible Elections

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June 2010, Chua's team also recommended 2010 not to use the PCOS machines of Smartmatic for 2013.

What is in store for the Filipinos in 2016 elections? Comelec has already aired at a congressional hearing of the House committee on Suffrage and Electoral Reform in May 2014 that they will conduct a public bidding next year regarding the purchase of new 121,800 units of PCOS machines at P10.96 billion budget for the use of an estimated 56 million registered voters (Blinkremz, 2014).

What will happen to the 82,000 PCOS machines which were purchased amid much controversy by Comelec from Smartmatic in March 2012? These were originally leased at P7.2 billion for 2010 elections and later fully acquired in 2012 through an Option-to-Purchase scheme at P 1.8 billion. The reason behind the purchase is primarily because Comelec planned to use these machines also for 2016.

2. Lawyer and Technologist vis RA 9369

Although Chairman Brillantes has been telling IT experts of Automated Election System Watch (AES Watch) not to speak about legal matters as they are not lawyers, the non-compliance of Comelec with RA 9369 in 2010 and 2013 only proves that lawyers of Comelec who handled the election automation project do not understand RA 9369. To cite an interview in 2013 as reported by Tubeza (2013), Brillantes said, "Don't give statements about legal (issues). When it comes to the (legal issues regarding the fight between) Smartmatic and Dominion, I know a little more than you because I'm a lawyer. When it comes to IT, I won't say I'm better than you but when it comes to legal, they should not go into that."

What Chairman Brillantes does not know is that IT experts played a key role in crafting the technical provisions of RA 9369 – they being knowledgeable with the nitty-gritty of the information system and technologies behind the AES law such as the source code review, digital signatures and electronic transmission, continuity plan, audit, advisory council, technical evaluation committee, etc.

In this regard, Comelec has to be more open and inclusive to suggestions or recommendations raised by organizations supported by IT experts as they are in the know as to what AES systems and processes would benefit our Country.

3. Salient Points of RA 9369

- 3.1. Section 6 of RA 9369 specifies that the AES must have at least a minimum system or functional capabilities such as (a) accuracy in recording and reading of votes as well as in the tabulation, consolidation/canvassing, electronic transmission, and storage of results; (b) system integrity which ensures physical stability and functioning of the vote recording and counting process; (c) provision for voter verified paper audit trail; (d) system auditability which provides supporting documentation for verifying the correctness of reported election results; and, (e) provide the voter a system of verification to find out whether or not the machine has registered his choice.

Comment: These were not complied with in 2010 and 2013 elections.

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- 3.2. Section 7 requires that all electronic transmissions by and among the AES and its related components shall use secure communication channels to ensure authentication and integrity of transmission.

Comment: This was not complied with in 2010 and 2013 elections.

- 3.3. Section 11 describes the functions of the Technical Evaluation Committee which shall certify that the AES, including its hardware and software components, is operating properly, securely, and accurately. Such is based on (a) the successful completion of audit on the accuracy, functionally and security controls of the AES software; (b) the successful completion of a source code review; (c) a certification that the source code is kept in escrow with the Bangko Sentral ng Pilipinas; (d) a certification that the source code reviewed is one and the same as that used by the equipment; and (e) the development, provisioning, and operationalization of a continuity plan to cover risks to the AES at all points in the process such that a failure of elections, whether at voting, counting or consolidation, may be avoided.

Comment: These were not complied with in 2010 and 2013 elections.

- 3.4. Section 14 states that the Comelec shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to (1) examine and test the equipment or device of the AES and (2) open the source code for review

Comment: This was not complied with in 2010 and 2013 elections.

- 3.5. Section 22 states that the election returns transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the canvassing of votes and the proclamation of a candidate.

Comment: This was not complied with in 2010 and 2013 elections.

- 3.6. Section 25 states that the certificates of canvass transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the proclamation of a winning candidate.

Comment: This was not complied with in 2010 and 2013 elections.

- 3.7. Section 30 stipulates that the manner of determining the authenticity and due execution of the certificates shall conform with the provisions of RA 7166 as may be supplemented or modified by the provision of RA 9369, where applicable, by appropriate authentication and certification procedures for electronic signatures as provided for in RA 8792 as well as the rules promulgated by the Supreme Court pursuant thereto.

- 3.8. Section 36 stipulates that the provision of Batas Pambansa (BP) Blg. 881, as amended, otherwise known as the 'Omnibus Election Code of the Philippines', and other election laws not inconsistent with this Act shall apply.

- 3.9. Section 37 stipulates that the Comelec shall promulgate rules and regulation for the implementation and enforcement of RA 9369.

Comment: This was not complied in 2010 and 2013 elections.

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3.10. RA 9369 amended Section 25 of Republic Act No. 7166 to read as follows:

"Sec 25. Manner of Counting Votes. - In addition to the requirement in the fourth paragraph of Section 12 of the Republic Act No. 6646 and Section 210 of the Omnibus Election Code, in reading the official ballots during the counting, the chairman, the poll clerk and the third member shall assume such positions as to provide the watchers and the members of the public as may be conveniently accommodated in the polling place, an unimpeded view of the ballot being read by the chairman, of the election return and the tally board being simultaneously accomplished by the, poll clerk and the third member respectively, without touching any of these election documents. The table shall be cleared of all unnecessary writing paraphernalia. Any violation of this requirement shall constitute an election offense punishable under Section 263 and 264 of the Omnibus Election Code.

"The chairman shall first read the votes for national positions.

"Any violation of this Section, or its pertinent portion, shall constitute an election offense and shall be penalized in accordance with Batas Pambansa Blg. 881.

Comment: The fact that Section 25 of RA 7166 was amended through RA 9369, only means that reading the official ballots during counting is still valid.

3.11. RA 9369 amended Section 206 of Batas Pambansa Blg. 881 to read as follows:

"SEC. 206 Counting to be Public and without Interruption. - As soon as the voting is finished, the board of election inspectors shall publicly count in the polling place the votes cast and ascertain the results. The board may rearrange the physical set up of the polling place for the counting or perform any other activity with respect to the transition from voting to counting. However, it may do so only in the presence of the watchers and within close view of the public. At all times, the ballot boxes and all election documents and paraphernalia shall be within close view of the watchers and the public.

"The board of election inspectors shall not adjourn or postpone or delay the count until it has been fully completed, unless otherwise ordered by the Commission.

"The Commission, in the interest of free, orderly, and honest election, may authorize the board of election inspectors to count the votes and to accomplish the election return and other forms prescribed under the code in any other place within a public building in the same municipality or city on account of imminent danger of widespread violence or similar causes of comparable magnitude: Provided, That the transfer shall be recommended in writing by the board of election inspectors by unanimous vote and endorsed in writing by the majority of watchers present: Provided, further, that the said public building shall not be located within the perimeter of or inside a military or police camp, reservation, headquarters, detachment or field office nor within the premises of a prison or detention bureau or any law enforcement or investigation agency.

"Any violation of this section, or its pertinent portion, shall constitute an election offense and shall be penalized in accordance with Batas Pambansa Blg. 881."

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Comment: The fact that Section 206 of BP 881 was amended through RA 9369, only means that the board of election inspectors publicly counting the votes cast in the polling place and ascertain the results is still valid.

4. Manual Elections

The non-compliance of Comelec with RA 9369 in 2016 is highly probable as it happened twice already in 2010 and 2013. Worse we, the Filipino voters, didn't see the election results in our respective precincts or we were not even given a chance to verify our votes in both electoral exercises. The conventional manual election system for the synchronized national and local elections before 2010 was truly transparent as the use of taras system in tallying of votes (i.e., BP 881 Section 210) could be clearly seen by our own eyes. The only problem with such system was the prevalence of "dagdag-bawas" (padding or shaving of votes) in canvassing at the time when the election returns (ERs) and ballots boxes were moved out of the precincts. A typical example was the infamous incident called "Hello Garci" in 2004 elections.

However, it is interesting to note that the barangay elections in October 2013, and even in the past, was very peaceful, transparent and credible in spite of manual voting and tabulation processes. We can attribute its success due to the vigilance of voters in their respective precincts and the mere fact that canvassing was localized such that anomalies would be easily detected. Hence, election results were immediately attained and winners were proclaimed promptly.

5. From Automated to Manual Election Experiences

Germany, Switzerland and Ireland were some of the countries that had used AES and eventually reverted back to manual tallying and counting of votes (Manalac, 2013). Germany's Federal Supreme Court in 2009 ruled against the AES because the use of electronic voting machines is contrary to the democratic and public character that elections must have. That is, electronic ballot casting, reading and counting systems lack transparency as nobody sees how the machines are reading each ballot and that the machines report results that no one could verify.

6. The Bro. Eddie Villanueva's Case

A recent ruling of Judge Celso O. Baguio, Gapan City Regional Trial Court-Branch 34 (see Figure 1) declared that "per manual counting of the votes appearing in official ballots used in Clustered Precincts Nos. 19, 29 and 30 in Barangays Pias and Concepcion, General Tinio, Nueva Ecija, candidate Eduardo Villanueva garnered a total of 900 votes as against the Comelec count of only 781 votes." This is just a factual manifestation that the AES used in 2010 and 2013 elections was defective. This was further elaborated by Celis in his explanation of ("Error in Application," 2014) committed by Smartmatic and the failing grades of "1.2" and "0.29" given by AES Watch in the System Trustworthiness Accountability and Readiness (STAR) Card in 2010 and 2013, respectively.

Figure 1: Manual count versus PCOS count

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REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
THIRD JUDICIAL REGION
BRANCH 34
GAPAN CITY

BERNARDO ARANAS and
ARLAN ESTEBAN,
PetitionerS,

-versus-

THE MUNICIPAL ELECTION REGISTRAR,
MUNICIPAL BOARD OF CANVASSERS AND
THE BOARD OF ELECTION INSPECTORS OF
BARANGAY PIAS (Clustered Precint 29
& 30) AND BARANGAY CONCEPCION (Clustered
Precint 10) ALL OF GENERAL TINIO NUEVA
ECIJA WHO FUNBCTIONED DURING THE MAY 13,
ELECTIONS.

Defendants.

x-----x

CIVIL CASE NO. 4378-13
FOR: OPENING OF Ballots AND
MANUAL COUNTING OF VOTES CAST
FOR BRO. EDUARDO .EDDIE..
VILLANUEVA WITH PRAYER FOR PRELI-
MINARY INJUNCTION/TRO

CERTIFICATE OF FINALITY

TO WHOM IT MAY CONCERN:

This is to certify that the Court rendered a DECISION dated 21 March 2014 disposing the above-entitled case, the dispositive portion of which states:

..WHEREFORE, premises considered, it is hereby DECLARED that per manual counting of the votes appearing in official ballots used in Clustered Precints Nos. 19, 29 and 30 in Barangays Pias and Concepcion, General Tinio, Nueva Ecija, candidate Eduardo Villanueva garnered a total of 900 votes as against the official COMELEC count of only 781 votes.

SO ORDERED.

March 21, 2014; Gapan City, Nueva Ecija.

(Sgd.) Celso O. Baguio

Hence, the same become FINAL and EXECUTORY, there being no appeal or motion for reconsideration or new trial filed within the reglementary period.

Issued upon the request of Mr. Bernard Aranas, for whatever legal purpose it may serve him.

This 7th day of May, 2014; Gapan City, Philippines.

ATTY. DONNA MICHELLE L. PINZAC-REYES
Branch Clerk of Court

7. Appropriate System for 2016

No copy of the 2013 CAC Report has been released but the report is that the CAC team, headed by USec. Louis Casambre of DOST, recommended to look for other technologies for the 2016 elections. However, CAC is mandated in RA 9369 Section 9 to recommend the most appropriate, secure, applicable and cost-effective technology to be applied in the AES just like what the CAC team of Chua did in 2008. Further, since November 2013, the public has been awaiting for their evaluation of the AES used on May 13, 2013 elections as the law mandates CAC

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within six months from the date of the election to submit the same to the oversight committee; none was disclosed so far.

In the absence of CAC's recommendation, AES Watch is proposing that the appropriate AES technology for 2016 should basically follow the concept of **Secret Voting - Public Counting** (SVPC) system. It doesn't matter whether the technology to be used is paper-based or a DRE election system as long as the tallied results in the precincts are verified as correct by the BEIs with the votes cast in the presence of the watchers.

AES Watch found SVPC as the solution to stop this "Hocus-PCOS" syndrome. That means, the 2016 AES should be equipped with facility for public counting or viewing. Or better yet, combine AES technology with Batas Pambansa Blg. 881 Section 206, which was also amended under RA 9369, which stipulates that "As soon as the voting is finished, the board of election inspectors shall publicly count in the polling place the votes cast and ascertain the results." This way, the voters would not have any apprehension that their votes are not counted.

8. Implementing Secret Voting – Public Counting System (SVPC)

There are several technologies that would support the implementation of SVPC system in the 2016 AES environment, to wit:

8.1. Technology 1: Use the existing PCOS machines that Comelec bought but with Filipino group/s or different vendor implementing the AES (paper-based election system)

- Smartmatic failed to comply not only with the bid requirements specified in the terms of reference of Comelec in 2009 but also with the provisions of RA 9369 (Celis, 2014; Averia, 2014). No need to invest but rather recondition all the PCOS machines and other AES-related components as these are considered sunk cost already. Moreover, all software-related systems should undergo source code review and test certifications.
- Projected expenses: Logistics (to and from the Comelec warehouse), PCOS ballots, Write-Once-Read Many (WORM) storage cards instead of Compact Flash (CF) cards, project management, technical support, test certifications, electronic transmission, digital signatures of BEIs and BOCs, servers/laptops for Canvassing and Consolidation System (CCS) and warehousing cost. If the CCS servers and laptops are still intact, then there is no need to acquire these equipment. The use of cameras, video cams, and cellphones can also be used to capture the proceedings of the tabulation and the election results.

How to implement SVPC:

Two ways

- (1) BEI feeds the ballots one by one to the PCOS machine for ballot appreciation while simultaneously projecting (i.e., using LCD projector or TV) the same for public viewing. As the ballots are appreciated, the running total of the votes casts are also verified by the BEIs and watchers. If the final tabulation by the PCOS machine has been verified correct by the BEIs in the presence of the watchers, the ER shall be generated and electronically transmitted with digital signatures.
- (2) BEIs count the shaded ballots one by one as per BP 881 Section 210 and compare with PCOS appreciation; if equal, proceed with the next ballot, else,

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determine the difference and decide whether the ballot is valid or not. This is already a straightforward verification of votes cast or an audit on the spot. At the end of the tabulation, the manual ER and that produced by the PCOS machine should be equal; if equal, electronically transmit the digitally-signed ER. Canvassing from the municipal to national levels shall be the same procedures but electronic transmission of certificates of canvass shall be digitally signed.

- CCS: The CCS bought by Comelec should only be used if it passed the source code review and test certifications; but preferably, the CCS developed in-house by Comelec should be used with corresponding source code review and test certifications too.

8.2. Technology 2: Adopt the DRE system or the Transparent and Credible Election System (TCrES) proposed by Namfrel/Transparency Elections as presented by former Commissioner Gus Lagman on July 27, 2014 at the AES Technology Fair at SMX, Mall of Asia.

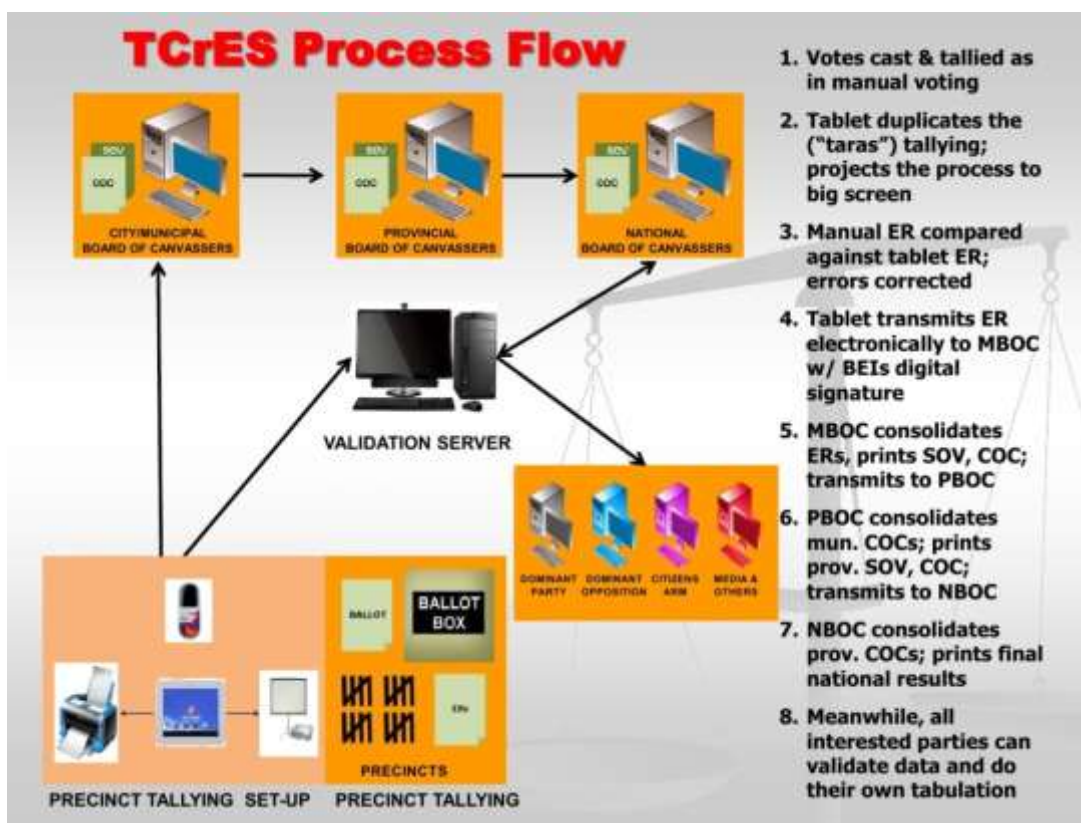
- The system is shown in Figure 2 (Lagman, 2014). The DRE device to be used in every precinct shall be a handheld tablet. Investment for the devices (i.e., tablets and paraphernalia) would cost Comelec around P 2 Billion. The devices should be acquired from the IT vendors in the locality of the polling centers so that logistical requirements and technical support would be borne by the said IT vendors. After elections, the tablets and other devices should be donated to DepEd.
- Projected expenses: Aside from the P 2 Billion cost of the devices, other expenses would cover ordinary paper ballots, project management, test certifications, electronic transmission, digital signatures of BEIs and BOCs, and servers/laptops for CCS. If the CCS servers and laptops are still intact, then there is no need to acquire these equipment. The use of cameras, video cams, and cellphones can also be used to capture the proceedings of the tabulation and the election results.
- Savings: The cost of bringing back the devices to Comelec warehouse is one source of savings if Comelec would be buying the devices directly. Another savings are the technical support and WORM devices to be provided by local IT vendors and the high cost of PCOS papers.

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Figure 2: Tablet as DRE (Courtesy of Namfrel/TransparentElections.org.ph)



- Benefits: DepEd would be using the devices until its useful life compared to PCOS machines that are only used during elections.
- *How to implement SVPC*: BEIs count the ordinary ballots one by one as per BP 881 Section 210 and simultaneously inputted to the tablet; this should result in instant equivalence of the manual count and that stored in the tablet. The manner of inputting of the vote cast in the tablet could be performed by one of the BEIs or a volunteer. The manual ER should be equal to the ER produced by the tablet.
- CCS. The CCS bought by Comelec should only be used if it passed the source code review and test certifications; but preferably, the CCS developed in-house by Comelec should be used with corresponding source code review and test certifications too.

8.3. Technology 3: Implement the CCOS technology used in 2008 ARMM elections

- *How to implement SVPC*: BEIs count the shaded ballots one by one as per BP 881 Section 210. After tabulation, the manual ER is prepared and the ballot box is sent to the central counting area. The ballots are fed in the CCOS and the ER is generated. If the manual and CCOS-generated ER are equal, the election results shall be stored for canvassing and consolidation of ERs in the voting center. When all the ERs are processed, these are consolidated and electronically transmitted with digitally signatures.
- Three choices in implementing CCOS technology:
 - Choice 1 - Buy brand new 2,000 CCOS machines whose parts are made of commercial-off-the-shelf hardware of computers, printers, CD/DVD WORM (i.e., Write Once Read Many) writers and document imaging

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scanners (e.g., the CCOS used in 2008). By the way, CF cards should not be allowed as storage medium but only CD/DVD WORM writers only. And after elections, said CCOS parts should be donated to DepEd. The cost of the CCOS machines is much cheaper and easy to implement than buying new 121,800 PCOS machines as being proposed by Comelec. The more machines to interconnect, the more risks and weak points present in the AES. Less machines would be simpler to manage with less people to support its operations.

- Cost of CCOS Machines in 2003 and 2008
 - The one thousand nine hundred ninety one (1,991) CCOS machines and its paraphernalia, software and professional services purchased by Comelec from MegaPacific cost P 1.3 Billion and such were intended for supposedly 2004 national elections. The one hundred fifty six (156) CCOS units from Avante cost P 123 Million and these were used for five (5) provinces in the 2008 ARMM elections.
 - At the current market value of CCOS components, the laptop would only cost P25,000, high speed scanner at 15,000, printer at 7,000, and the CD/DVD writer at P2,000 for a total cost of P50,000. The CCOS software may vary depending on the cost of system development. So we could cost a customized CCOS at P75,000 to P 100,000 per unit with or without the profit margin.
- Choice 2 - Interconnect a pool of existing PCOS machines to serve as the CCOS for the voting center. The chosen PCOS machines, however, must be reconditioned and that the software to be used should undergo source code review and test certifications.
- Mix new CCOS machines with existing pool of PCOS machines (i.e., Choices 1 and 2 combined)
- Projected expenses: Around P 2 Billion cost for the new CCOS machines, CCOS ballots, project management, test certifications, logistics (from the Comelec warehouse only), electronic transmission, Write-Once-Read Many (WORM) storage cards or CDs/DVDs instead of Compact Flash (CF) cards, digital signatures of BEIs and BOCs, servers/laptops for CCS and warehousing cost. If the CCS servers and laptops are still intact, then there is no need to acquire these equipment. The use of cameras, video cams, and cellphones can also be used to capture the proceedings of the tabulation and the election results.
- CCS. The CCS bought by Comelec should only be used if it passed the source code review and test certifications; but preferably, the CCS developed in-house by Comelec should be used with corresponding source code review and test certifications too.

8.4. Technology 4: Combination of above technologies or even other available technologies that would support SVPC.

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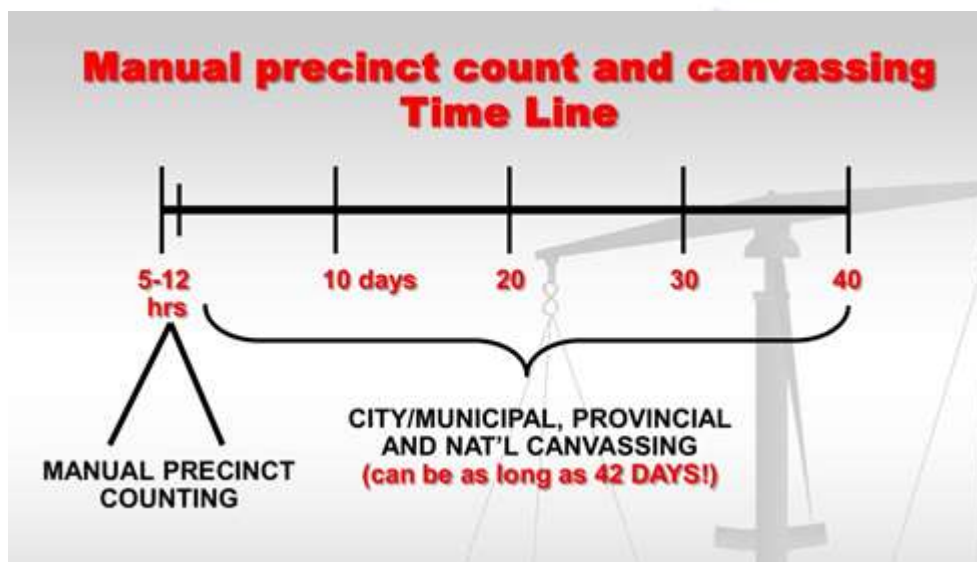
9. Effects of Secret Voting – Public Counting System (SVPC)

Our 1987 Constitution, Article II Section 1 declares that “The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.” We, the sovereign Filipino people, assert our sovereignty in our votes in national and local elections. Hence, our votes should reflect the true will of the people in a clean and honest elections which could only be realized through SVPC system to be used in the AES environment of 2016 elections.

With SVPC, we would definitely solve the transparency problem of AES used in 2010 and 2013 and eliminate the “dagdag-bawas” inherent problem in a manual system. This is the appropriate trustworthy AES for 2016; it is very transparent and credible that would really support “Sovereignty resides in the people and all government authority emanates from them.”

Figure 3 shows the time span spent in a manual election system. Thus, if we adopt the SVPC system, we’ll spend 5 to 12 hours, or the same time we are accustomed in the manual counting of votes, for the combined counting and instant verification of votes cast. Though the 1987 Constitution states that the certificates of canvass should be received by the President of the Senate not later than thirty days after the day of the election, this can be done at least one week conservatively bearing in mind that all the transmission facilities are in place.

Figure 3: Manual precinct count and canvassing timeline (courtesy of Namfrel/TransparentElections.org.ph)



10. Recommendation

AES Watch is strongly recommending SVPC system for the AES to be used on May 9, 2016 national and local elections.

With SVPC, it is guaranteed that “Sovereignty resides in the people and all government authority emanates from them” and that the true will of the Filipino electorates would really be reflected in the votes. Hence, with SVPC, this would not only prevent the Bro. Eddie Villanueva’s

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case, and even to those losing candidates due to defective AES in 2010 and 2013, but would also assure compliance of Comelec with RA 9369 and improve the STAR card rating of the AES (i.e., passing mark of “4”) for 2016 elections.

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