



May 26, 2009

HON. JOSE ARMANDO R. MELO
Chairman
& the Commissioners
Commission on Elections (Comelec)

Dear Chairman Melo,

We hope that this letter finds you well as you go about the official task to prepare the groundwork for the first automated elections in the country in 2010.

Believing in the universal principle of democratic elections on secret voting and public counting as mandated in the Omnibus Election Code (BP881), as well as in the precepts provided for by Section 1 of Republic Act 9369 as amended, to quote, "...improving on the election process and adopting systems, which shall involved 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," (Section 1, Declaration of Policy), the Center for People Empowerment in Governance (CenPEG), a non-government public policy research center, takes this opportunity to present to you a copy of its 19-page, 3-month policy study on the Automated Elections System of the Comelec for whatever purpose it may serve your office.

We hope the study would be a humble contribution to the common national concern of promoting transparency and credibility in our electoral systems and in the urgent need to institute fundamental changes in the organization of our country's prime election manager, on whose hands, 50 million Filipinos will rely on, hopefully in the conduct of the Philippines' first automated elections in 2010.

In relation to this, we wish to inform you that a study of the automated elections law, RA 9369 itself is ongoing along with RA 9184 or the Procurement Reform Law which we also think needs a thorough revisiting by Congress. We will be most pleased to share again the findings with you and the public for the same purpose.

For us, transparency, access to public information, and accountability are basic democratic tenets vital to the exercise of good governance. At no other time are these best put into practice than during elections which is also an opportunity for the people to collectively go out and participate in a public exercise to choose their leaders with the assurance that their votes will be well counted.

We know the increasing pressures now weighing heavily on the Comelec as it hurdles the litmus test to erase all residues of doubt cast on its tarnished image, including the unforgettable "Hello Garci, I am sorry" episodes of its recent history. Compounding the problem that it has to face is a very tight calendar of activities that the Comelec is forced to revise time and again since the release of the approved supplemental budget of P11.3 billion. Yesterday, the chairman of the Special Bids and Awards Committee (SBAC), Atty. Ferdinand Rafanan admitted that the Comelec is now working behind schedule (one month to our monitoring), because, among others, "the motions for reconsideration were not taken into account when preparing the timeline."

This validates one of the serious concerns raised early on by our office in several meetings with concerned officials of the Comelec and its Advisory Council. In our study, we pointed out that the new tact of adopting automation in the conduct of elections in a



country with systemic fraud and violence requires thoroughgoing preparations and should have been a subject of nationwide public consultations involving not only the IT community but also the academe, media and all other sectors and stakeholders in the elections. Democratic consultations with a wider and broader constituency, not only among a few experts and advocates, as well as feasibility and comparative studies on election technologies "most suited to Philippine conditions" should have been done much earlier to avoid invoking "time constraint" and lapses in knowledge and ethical behavior as it prepares for the complexities of its chosen technology. This, we believe the Comelec failed to do.

Other critical areas in the automated elections system (PCOS-OMR) as adopted by Comelec are well expounded in the study and to which we hope our Comelec officials would be able to address.

There are good and well-intentioned members of the Comelec but good intentions are not enough. As things now stand, we hope the Comelec at this critical juncture should welcome and be more open to new ideas and suggestions now rather than shut off debates against well-founded criticisms from even its harshest critics.

While we believe that the automation law provides positive opportunities for electoral reform, we maintain that more efforts should respond to the far-ranging problem of cheating machineries in the country like political dynasties, private armies, corruption, and patronage, among others. Internal changes within the Comelec should be decisively and continually undertaken to make it more equipped and more prepared to manage the complexities and challenges of new technology, amidst the prevailing culture of unbridled corruption. It even failed to implement automation in "highly urbanized areas, and two provinces each in Luzon, Visayas and Mindanao" as required by law, and instead chose to pilot test it in a no-contest region like the ARMM.

In the meantime, the Comelec has P11.3 billion to spend on the 2010 elections, and whatever people say, it will go ahead and implement a fully computerized elections. We do not want a "No-EI" scenario as the good Comelec Chairman declared in the middle of its problematic bidding process. We do not want the elections to fail, and disenfranchise millions of Filipinos. If automated elections push through, there are critical areas provided by law that may serve as major safeguards though not necessarily sure solutions to internal rigging and fraud, namely, the source code review and the digital signing of the election returns (ER) by the BEI. The source code is the software program that runs the entire operations of the election system. In the PCOS-OMR, it is the set of procedures that will do the scanning, storing, counting of votes and transmission of the election returns. According to studies, much of the complaint against computerized elections in the U.S. is because the citizens do not know how the computers count the votes.

In the ARMM election of 2008, the Comelec failed to do a comprehensive source code review as required by law due to "time constraint." A source code review may not solve the problem of fraud but disclosing it for public scrutiny, not only for a few interested political parties and experts, should provide a major safeguard, if at all.

We therefore ask the Comelec to provide us a copy of the source code of the PCOS programs, the BOC CCS programs for the municipal, provincial, national, and congressional canvass, the Comelec server programs, and to include the source code of the in-house Comelec programs called the DCS utilities. We are making this request not only as an interested party in source code review, as provided for by RA 9369, but in the exercise of our right to access to public information. We would also ask for sample Comelec data, because the source code will be difficult to read without the data



descriptions. Republic Act 9369 on the amended Automated Election System provides, "Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof."

Furthermore, the Comelec Terms of Reference/Request for Proposals provides the following provisions: "7.4 The winning bidder shall authorize COMELEC to make the final source code of the PCOS and CCS and all of its components available and open to any interested party or groups which may conduct their own code review thereof."

Source code review takes time. The release should be done fast and without delay. Since the law and the RfP only provides its release to interested parties, we ask Congress to legislate for its full and unconditional release to the public, where everybody can review as an increasing number of countries are undertaking.

Since it is a public exercise, we believe that automated elections should not promote a culture of "expertism." The people should have a say and be able to know simple processes, not complex or complicated systems that are difficult to understand and monitor. The mechanics of democracy should not be private. Elections should be completely transparent. We believe that all vote counting software applications used by the Comelec after the bidding is over, should be the property of the citizens of the Republic of the Philippines but recognizing the intellectual rights of the creators who sold the software. As such, they should be made open and public to enhance security and efficiency. Every single piece of election software should be 100% open. Not open source per se, but the code, all codes, should be reviewable by anyone.

Although releasing to the public the source code is not a full guarantee to fraud-free elections, it would make automated elections prescribed by the Comelec transparent at the least and participatory to our people who have the highest stakes in elections.

Yours sincerely,

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