

# aesWatch 2010

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## NEVER AGAIN TO SMARTMATIC'S PCOS MACHINES

We are the same stakeholder citizens' groups from the academe, church and interfaith, professionals, industry, farmers and workers', women and children rights' advocates, Moro and indigenous people, policy study think tanks, and election watchdogs that had patiently monitored and studied the preparations and the conduct of the first nationwide election automation in the May 2010 synchronized polls.

We made various individual and collective efforts to help the Commission on Elections (Comelec) push through with the last national elections. Alerted, however, by the vulnerabilities of the election system they were going to use, we pushed for the proper safeguards and security measures compliant with Philippine laws and industry standards. These were unheeded. With the internal defects of the Smartmatic system left uncorrected, we warned candidates and political parties that in order to win the automated elections convincingly, credibly and without fierce poll protests from their rivals, they have to win by a wide margin, in fact by as many as five (5) million votes in the case of the presidency.

Consequently, post-election studies and investigations including those of the 14th Congress found the Smartmatic's PCOS technology as being, among others, fraught with technical breakdowns, transmission failures, a big number of disenfranchised voters – from 4-7 million – and the number of election protests (many automation-related) bigger than in previous manual elections. We are now more certain that the Smartmatic's election system is inherently flawed and, if used again, will further compromise the overarching needs for accuracy, reliability, and trustworthiness in elections.

Smartmatic, the Venezuelan marketing company contracted to provide the election computer program and machines at P7.2 billion for the May 2010 elections, and the Comelec, composed mainly of lawyers with a serious lack of IT competence, continue to ignore these independent studies and assessments. Instead, under the new Chairman, Atty. Sixto Brillantes whose former law firm partner provided legal services for Smartmatic, the Comelec decided en banc last February 1 to purchase and use the same fatally-flawed PCOS machines and technology in the coming ARMM elections scheduled in August 2011.

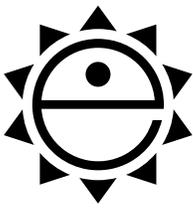
The Comelec continues to turn a blind eye to the fact that Smartmatic can never comply with Philippine laws because it is another foreign company - Canadian and US-based-Dominion Voting Systems - that owns and can solely decide to release or not for independent review of political parties and interested groups, the election computer program including the source code. In an official letter Dominion Voting Systems, according to the IT consultant of Chairman Melo and now Chairman Brillantes, does not, and will not, authorize Smartmatic, the contracted party of Comelec, to release the source code to other interested parties including political parties. Such is contrary to RA 9369 and a defiance to the May 6 and September 21, 2010 rulings of the Supreme Court on the petitions of former Vice President Teofisto Guingona, et al, and of CenPEG respectively, compelling the Comelec to release the source code and other vital election documents that would help further validate earlier findings that the Smartmatic PCOS is fatally flawed and should never be used in any Philippine election again.

Dominion Voting Systems is the same Canada-based company that provided the election technology in the November 2009 special election for New York's 23rd congressional district which saw many software problems in the machines, particularly "for races that allow voters to vote for more than one candidate." In the following election of 2010, the New York Board of Elections junked Dominion Voting Systems which lost a \$50 million contract to provide the electronic voting machines in New York. The contract went to rival automation provider, Election Systems & Software, Inc., which ironically, was one of the failed bidders in the Philippine election automation project. This shows that as a sovereign country, the Philippines should not allow its election system to be held hostage to any foreign marketing company and election technology if proven to be highly flawed, more so, non-transparent and accessible to Filipinos especially to the Filipino IT community and major election stakeholders.

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### aesWatch conveners' shared concern: Transparent and Credible Elections

... includes University of the Philippines Alumni Association (UPAA), National Secretariat for Social Action-Catholic Bishop Conference of the Philippines (CBCP), Bishop Broderick Pabillo and Bishop Deogracias Yniguez of the Commission on Public Affairs of the CBCP, Center for People Empowerment in Governance (CenPEG), Ecumenical Bishops Forum, National Council of Churches in the Philippines (NCCP), Dr. Rachel Roxas-Uy, dean of the De La Salle University- College of Computer Science (DLSU-CCS), Dr. Reena Estuar, chair of the Ateneo de Manila University- Department of Information Communications System, Dr. Jaime Caro, chair of the UP Department of Computer Science, CAUCUS- Philippine Computer Society, Association of Major Religious Superiors in the Philippines (AMRSP), Computer Professionals Union(CPU), Solidarity Philippines, Philippine Computer Emergency Response Team (PhCERT), National Union of Students in the Philippines (NUSP), Engr. Rodolfo Lozada, Dilaab-Hearts Foundation, Senior Catholic Citizens Organization, Coordinating Council for People's Development and Governance (CPDG), Health Alliance for Democracy (HEAD), Transparent Elections.org, Concerned Citizens' Movement (CCM), Sisters Association in Mindanao (SAMIN), Association of Schools of Public Administration of the Philippines (ASPAP), Computing Society of the Philippines (CSP), Transparency International-Philippines, Pagbabago (Movement for Social Change), Movement for Good Governance (MGG), Alyansa Agrikultura, Philippine Computer Society Foundation, Atty. Al, Vitangcol, and many others.



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## **We repeat: The Smartmatic's PCOS should not be used again because -**

- Its computer program was found to have bugs and errors that manifested in the May 2010 elections, ranging from time and date discrepancies, to erroneous COCs in 57 provinces, ER transmissions based on faulty compact flash cards, questionable voting figures and wrong counts publicized by both Smartmatic and Comelec, and other flaws.
- IT industry standards dictate that when the system is not 100% perfect, it cannot be trusted and should instead be replaced by a new system that is compliant with the election law with all the requisites needed – from software to hardware, to competent election management, and adequate infrastructure support.
- Smartmatic cannot fix the errors in the PCOS/CCS hardware, software, and computerization procedures – as it promised - within the six months left before the ARMM elections or even in one year. So far, there are at least 8 major errors that have to be fixed, in order to make the PCOS/CCS compliant to RA 9369 and the Comelec ToR (terms of reference).
- We can readily show that the Smartmatic PCOS computer program contains more bugs and errors once the Comelec releases the source code unconditionally now – along with 20 other vital documents - as directed by the Higher Court on Sept. 21, 2010 and advise the Comelec on how the program can be properly fixed, if at all.
- Until all major election concerns are addressed – the legal cases filed against the Comelec, the constitutional obligation to disclose all vital election documents such as the source code as ordered by the SC, automation-related election protests, the full evaluation of the May 2010 elections by the Comelec itself – the Smartmatic election system should be swept aside altogether as an unreliable and dangerous technology
- “Cheap price” as peddled by Smartmatic in convincing Congress and Comelec to buy 5,000 PCOS machines for the ARMM elections should not be a substitute to accuracy, reliability, and trustworthiness. Election is a sovereign political exercise that cannot be held hostage to marketing strategy especially by a foreign consortium.

If the ARMM elections are held this year, there is no recourse but to revert to the manual system as resorted to by Comelec in the last barangay elections but with heightened citizen vigilance. However, as was shown in 2008, the use of a new technology remains an option. We are aware of how tedious a manual election process is, that is why we advocate automation of elections and the harnessing of Filipino IT expertise and technology. We trust that Congress could come up with informed recommendations, placing utmost importance to accuracy, transparency, auditability, legality, and trustworthiness above all other considerations, including ensuring the “bread and butter” of the Smartmatic marketing company and its IT, legal and varied consultants who had readily compromised the integrity of automating elections.

**Prepared for the Hearing of the Committee on Suffrage and Electoral Reforms w/ Committee on Muslim Affairs/ House of Representatives,**

**February 16, 2011**

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