



SHOW PROOF!

- Disclose documents of PCOS program error fixing
- SHOW the PCOS source code trusted build and certification (it was not shown and subjected to the January 10, 2013 trusted build activity)
- OPEN so-called internal testing and reviews to the public and media
- SHOW what license Smartmatic is using to operate the program software owned by Dominion Voting Systems
- PROVIDE political parties, partylist groups, candidates and poll watch groups PROOF of:
 - 1) Certification testing of 82,000 PCOS machines, 2,000 CCS, EMS and transmission;
 - 2) Printed PCOS & MBOC audit logs of the machines and transmission during mock elections and actual elections to show how the PCOS machines has behaved during election day;
 - 3) Properly prescribed digital signatures according to Philippine laws and regulations;
 - 4) CF Cards that cannot be written on by any other data;
 - 5) Contingency plan

January 28, 2013

**Hon. Sixto Brillantes
& Commissioners
Commission on Elections (Comelec)**

Through:

The Joint Congressional Oversight Committee (JCOC) on the Automated Election System
The Senate Committee on Electoral Reforms and People Participation (CERPP)
The House Committee on Suffrage and Electoral Reforms (CSER)

Dear Honorable Chairman and Members of the COMELEC:

A day after conducting the field testing of the PCOS (precinct count optical scan) machines last January 26, the media quoted Comelec spokesperson James Jimenez, that “he considered Saturday’s field tests a success because the electronic transmission of data went well with majority of the PCOS machines transmitting test results 100 percent.” (*Philippine Daily Inquirer, Daily Tribune, Philippine Star, January 26, 2013*)

Mr. Jimenez, it will be recalled, was the same Comelec official who, on May 3, 2010, was also quoted by media to have ordered the “burning of the 72,000 CF cards” that were found to have contained erroneous data during the final testing and sealing of the same PCOS machines supplied by the same contracted vendor, Smartmatic. That same day, CenPEG and other poll monitors raised a howl of protest and warned not to burn but safekeep the CF cards for future investigation. (*Philippine Daily Inquirer, Daily Tribune, Philippine Star, May 4, 2010*).

As in previous testing and reviews conducted for marketing and “walk-through” purposes by the vendor, we now ask: Who will validate these tests outside of the vendor, the contractor and allied observers who have been part of the contracted service providers in May 2010 when the PCOS machines were first used nationwide?

AES Watch 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 Pabilo 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 Agrrikultura, Philippine Computer Society Foundation, Atty. Al, Vitangcol, Former Vice President Teofisto Guingona, Jr. and others.



AES Watch

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For the field test last January 26, your office earlier informed accredited watch groups Namfrel and PPCRV to observe the Field Test on January 26 only to rescind it at noon of January 25, 2013, saying that the “field test is not open” to outside observers including media because “a lot of activities involved in field testing are internal to the system.” Why the secrecy and the haste to withdraw participation by independent monitors?

We from AES Watch, wrote you immediately on the same day to assure your good office that whatever technical reasons you have for denying direct observation by media and watchdogs, the field test should be “a welcome opportunity to put to rest” the many concerns and apprehensions raised by our IT security experts and social scientists regarding the unreliability of the PCOS machines supplied by Smartmatic.

We particularly asked your office to take serious attention to the on-going legal feud between the Comelec-contracted technology provider, Smartmatic (SMTT) and PCOS software owner Dominion Voting Systems (DVS) which terminated its license to SMTT over non-compliance of IT standards, business practices and money. Why doesn't the Comelec conduct a probe instead into the allegations by the PCOS technology owner, DVS, that Smartmatic bungled the technical preparations for the May 2010 elections hence the May 3, 2010 CF cards fiasco that almost derailed the first nationwide automated elections?

But as expected, the honorable commissioners downplayed the legal and technical implications of this legal suit filed with the Chancery of Delaware (U.S.) last May 23, 2012. The Filipino IT community and our techno-legal experts, on the other hand, have not failed in reminding the honorable Commissioners, who are mostly lawyers, that with a non-licensed election technology, the government would open itself to using pirated technology and would likely be liable for grave damage to proprietary rights. Much worse, without the license, Smartmatic will never have the authority to correct all the critical errors found in the PCOS program and introduce major enhancements in all 81,000 machines that were stored and gathered up dust for three years in the problematic warehouse in Canlubang, Laguna.

Today, at the House Committee of Suffrage and Electoral Reforms (CSER), the contractor agency and the contracted firm will be asked to update the honorable lawmakers on the progress of the preparations for May 2013. AES Watch, CenPEG and other non-accredited observers whose experts did extensive studies on the Smartmatic PCOS had not been extended formal notice of invitation to sit in the panel as they did before. Upon the specific instruction of the Committee chairman, only the “AES implementers” will speak as resource persons and allowed to sit in the panel.

Again, who will help validate these reports and who among the honorable representatives of the House and Congress would dare check the veracity of these reports if legitimate members of media and civil society groups, including the Filipino IT community and social scientists who have done scientific and rigorous studies on the Smartmatic AES - their documented findings submitted to Congress and the Comelec - are left out and relegated to the archives and ignored altogether? Who among the members in the Congressional Committees tasked to oversee the intricacies of the AES, would be bold enough to raise the issues of transparency and accountability from the vendor and the premier election manager? Who would dare ask and compel the “AES implementers” to disclose vital information on the state of the counting and canvassing programs, so vital to computerized electoral exercise?

How, for example, did the Comelec and the various congressional committees respond to our findings of the July 24-25, 2012 House CSER mock elections showing that based on the documented results generated by their own selected PCOS machine and as reported by Smartmatic itself, the accuracy rate is actually 97.6% which when mathematically computed, translates to 557 errors for every 20,000 oval shades, as against the legally and technically acceptable ratio of one (1) error for every 20,000 oval marks (at 99.995%)!

At the trusted build activity done on the source codes of the AES last January 10, 2013 inside the Comelec Project management Office, we particularly noted that the Comelec and Smartmatic did not show or subject the PCOS source code for trusted build, despite its being the most critical and vital component of the system! Why no source code of the PCOS?

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And yet, your office has called all testing and reviews as “outstanding success”!

We ask the members of the Comelec, the men and women of the 15th Congress, most of whom will be running again for public office, to honor their sworn duty to uphold the rule of law and exercise to the utmost their oversight functions to make poll automation fully functional and up to quality standards.

We believe the Comelec has not been up to the task for transparency and accountability then in 2010 and now in the 2013 automated elections. To automate elections well, quality standards that are already prescribed by law, state regulations and industry best practices SHOULD be strictly complied with.

We say with all honesty and candor, that the Smartmatic PCOS has failed in these aspects in complying with the minimum requirements of the Poll Automation Law especially in securing the vital safeguards to ensure the integrity of the vote and transparency of the election process. It is not to be trusted. Once again, as in the past, it will not protect the people’s right to suffrage, will make the election subject to vulnerabilities including electronic fraud and, hence, will not express the people’s sovereign will.

We realize the futility of engaging with a powerful consortium of contractor and contracted parties that believe that it is best to “leave them alone to do their job” while citizens’ groups like us are better off in a corner as spectators of an exclusive, secrecy-shrouded exercise.

In a truly functional and matured democracy, citizens do not beg for public information and be included in public processes to participate in decision making. Every citizen – lawyer and non-lawyers, educated and non-educated—has a right to access and obtain information especially emanating from public offices subsidized by taxpayers’ money.

It is unfortunate that the right to public information or the freedom of information is not a lamp post and a guide to public service by the Comelec. It is disturbing since in automated elections, the machines, not humans, have become the powerful instruments for counting and transmitting counted votes. Even more disturbing is when the foreign profit-oriented marketing company that does not own the technology to be used in the machines, literally runs the elections in a sovereign country like the Philippines.

Without the vital safeguards in place – PCOS source code review and certification, digital signatures as mandated by Philippine laws and international standards, among others - we call on the Comelec to allow political parties, candidates and poll watch dogs access and the authority to obtain the following information and documents during elections, after the votes have been cast and counting/canvassing done:

1. Printed precinct audit logs
2. Printed MBOC audit logs
3. Election Returns (as mandated by law)
4. Hash codes
5. Other statistical reports to be generated by the PCOS

All these we ask because we believe that without transparency and accountability, the Smartmatic PCOS and the preparations being undertaken by the Comelec with the contracted vendor for May 2013 elections have been nothing but a charade to show that everything is well and functioning normally.

We ask that the Joint Congressional Oversight Committee (JCOC) look further beyond the mechanical implementation of the preparations – the quality of how the preparations are being undertaken through compliance with the law and industry standards. As a congressional oversight body, the JCOC has already failed in its mandate to assess the AES for 2010 and make timely proposals for a fully functional AES for May 2013. RA 9369 explicitly states that the JCOC should assess within one year after the elections and submit recommendations on the appropriate technology and system to be used. The unconscionable expenditures of the bid-out related AES paraphernalia and contracts that accompany the technical preparations have made poll automation in the Philippines the most expensive in the world.

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The last to opt to go back to the fraudulent manual elections of the past are the IT and modern-day cyber practitioners who belong to AES Watch. But with the way the Comelec has allowed the haphazard and definitely reckless implementation of the minimum requirements of the Poll Automation Law by the contracted vendor, it has become a mockery instead of the intent of the law to modernize elections and eliminate fraud through less human intervention.

With the Smartmatic PCOS, electronic fraud – or cheating by a machine with an erratic counting program inside that people do not see and observe – looms in May 2013 **IF** safeguards are not strictly followed and errors are not fully corrected in time. Political parties and poll watchers should be better guided than by just being knowledgeable at oval shading and screen display watching.

To help detect and vigilantly guard against electronic fraud and all vulnerabilities of the Smartmatic PCOS machines, AES Watch poll monitor guides shall be made available in the name of transparency and accountability and for public service.

Sincerely for AES Watch,

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