



## PRESS RELEASE

Center for People Empowerment in Governance (CenPEG)

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## CenPEG: Comelec's non-compliance of automation law poses legal and credibility questions on coming elections

The think tank Center for People Empowerment in Governance (CenPEG) today asked the country's voters and poll watchers to prepare for contingency as the automation system to be used for the May 13 mid-term elections will trigger legal and credibility questions – more critically than in May 2010. CenPEG is a key convener of AES (Automated Election System) Watch which continues to monitor the ill preparedness of Comelec's poll automation project with the contracted foreign technology sales firm, Smartmatic.

Bobby M. Tuazon, CenPEG director for policy studies, said the absence of a source code review, the lack of license for using the system, and the disabling of all major safeguards and accuracy features of the Smartmatic-marketed voting and canvassing machines will not only resurrect on a bigger scale the technical errors of May 2010 but also raise legal grounds questioning the legitimacy of the coming polls because of the flawed process.

"More disturbing now are the counting and transmission errors documented by the SysTests Lab report on the voting program used in the 2010 elections have remained in the absence of an operating license from the real technology owner, Dominion Voting System," the political scientist said.

Tuazon, who is also a co-convener of the independent citizens' AES Watch, took exception with Comelec Chairman Sixto Brillantes, Jr.'s claim that source code review is not an absolute legal requisite and, hence, will not nullify the election results. He said that Brillantes as head of a constitutional body should be the first to comply with the election law especially its crucial provision on independent source code review by political parties and other interested groups to contain possible legal questions later.

CenPEG's landmark victory on the source code in a September 2010 ruling of the Supreme Court was effectively overturned by the Comelec under then Chairman Jose Melo with its restrictive guidelines which prevented Filipino IT programmers and academics from conducting an independent review as mandated by law.

Brillantes had earlier admitted to a national daily that there was no source code in both the 2010 and the coming May 2013 elections. Source code is the human-readable program that runs and controls the step-by-step process of the automated elections from receiving the ballots to counting, consolidating, and transmitting the votes. The Comelec chairman's recent admission confirmed once again the finding of CenPEG and its AES Watch partner groups since 2009 about the lack of source code in the 2010 and, again, 2013 elections.

Pablo R. Manalastas, PhD, IT Fellow of CenPEG, reminded Brillantes that RA 9369 has no escape clause on source code review. "There is nothing in the law that allows Comelec to go around this legal requirement," he said. Manalastas also questioned the former election lawyer's insistence that if "there is no source code, how can there be a review" and "if there was no source code review done in May 2010, then we can also do without it in 2013." The IT programming guru lamented how the chairman of a powerful election body who is a non-IT can circumvent the law and spread around false explanations to cover up technical glitches manifested in actual PCOS testing and mock elections.

The source code review claimed by Brillantes as having been conducted by the U.S.-based SysTest Labs International (SLI) in 2010 and 2012, supposedly for the May 2013 polls, was improper and cannot be trusted since it did not check the election management system (EMS), precinct count optical scan (PCOS), and the canvassing-consolidating system (CCS) for conformity to the Philippine election law. (The supposed SLI review done in 2012 of the 2011 system program for the ARMM regional elections which was to be tapped for the May elections this year could not be revealed without the approval of the Dominion Voting Systems. Dominion terminated its licensing agreement with Smartmatic on May 23, 2012.)

Not only was the claimed review improper and inadequate, Tuazon said, but the errors and malicious bugs uncovered in 2010 could no longer be corrected since Smartmatic now is neither authorized to use the program nor access it to be able to correct the system errors for which, anyway, only Dominion as the real proprietor is qualified.



Among these deficiencies, Manalastas said, are: a) inability of the PCOS program to detect changes in ballot design and reconfigure itself accordingly which led to the May 3, 2010 CF cards fiasco; b) inability of the PCOS and CCS to tell the difference between final testing and sealing (FTS) that resulted in the inclusion of erroneous pre-election FTS results in many precincts in 2010; c) gross errors in statistical figures showing from 150 million to 250 million voters during national canvassing as against 50 million registered voters; and d) transmission errors from PCOS to Comelec central servers resulting in 13,000 plus clustered precinct election results (ERs) with incomplete data out of 60,000 transmitted ERs.

Tuazon said that aside from this, the system's low accuracy rating of 97% (as against the mandated 99.995%), and the unlawful disabling of verifiability and transparency features, safeguards, and security features make the 2013 election system more vulnerable to automated fraud and wholesale cheating as has been found in several 2010 election protests including Compostela in Cebu, Biliran, Bulacan, Manila, Cagayan de Oro, and other areas. "Today, more election cheats are expected to have mastered the crime of computerized fraud and be able to get away with it especially in the light of the election system's disturbing vulnerabilities and the absence of a clear adjudication process," he added.

Tuazon also took exception to Brillantes' scolding of an accredited watchdog, Namfrel, over the latter's publication of technical glitches based on the Feb. 2 mock elections and recent field tests and demos including the overseas absentee voting (OAV) in Hong Kong. He said that Namfrel, which is also affiliated with AES Watch, was just making the truth communicated which, after all, is already known by the media and voters.

As an accredited watchdog, Namfrel is not duty-bound to keep its mouth shut on a concern that has become a national interest issue, Tuazon said. "Brillantes' undemocratic tendencies and exclusivist behaviour are what make for policy failure," the CenPEG analyst said. "His habitual and emotional outbursts and labelling constructive criticisms and expert advice by IT professionals as 'election sabotage' are precisely pushing the election process to dangerous grounds. In the first place, CenPEG and AES Watch's proposed solutions and remedies long submitted to Comelec and the 15th Congress remained unheeded."

The Comelec, under Brillantes, wasted three years to correct the systemic mistakes of 2010 and prepare for 2013, Tuazon said. Comelec may be commended for enforcing the rules on campaign paraphernalia, vote buying, violence, and other election malpractices. "But the poll body cannot evade accountability for its non-compliance with the election automation law as well as its blind trust on the unreliable Smartmatic despite contrary recommendations by its own advisory council," he said.

"The ever-reactive Comelec with a chairman prone to ill-informed reactions is not only running against time but time itself has overtaken Comelec," he said.

Given the mismanagement of the election by Comelec, CenPEG called on the people and election watch groups to prepare for contingency, make sure that elections pushed through alert however of its system flaws, and not just watch but gather verified evidence of automated fraud and other irregularities for post-election cases.

"This is a daunting task given that the favorite accredited citizen group, PPCRV, has suffered credibility problems from its blind adherence to the false claims of the technology sales company now embroiled in a legal row with the real technology owner in the U.S.," the center said.

"We have stopped debating with Comelec and its chairman who has resorted to gutter language and labelling of experts in poll automation in the country. Our only weapon now is the wealth of documentation that continues to surface and debunk the all-time myth of the Comelec and its foreign technology provider, Smartmatic, that its PCOS machines are to be trusted to secure the count of the people's votes in the coming elections. Truth is on our side and the chairman has no choice now but to publicly admit what we have been articulating since 2009 about the Smartmatic technology," Tuazon said.

The AES Watch's book editor, said, "The chairman should stop making threats about walking out, suing the Comelec's critics as election saboteurs and even about resigning because the Supreme Court which he lauded in 2012 for agreeing with him to exercise the option to purchase the PCOS machines, turned its back on him in another election issue."

"Now, Chairman Brillantes is threatening to sue Smartmatic for bungling the preparations for the 2013 elections," Tuazon added, noting the "inconsistency and emotional flip-flopping" that Comelec decisions are beginning to be known for under Brillantes's watch. "He should make do his threats and desist from his emotional media-hyping which is making him really ill-prepared for his job," he concluded.



## Center for People Empowerment in Governance

"What makes CenPEG's mission significant is that the power it seeks for the people is in the area of governance. Towards this end, it engages in policy studies and research, education, training and advocacy aimed at securing political and electoral changes that would bring hitherto marginalized sectors into active participation in defining and shaping the destiny of our nation."

Tuazon also announced that AES Watch has set up a nationwide monitoring system for the 2013 mid-term elections in partnership with the University of the Philippines' research center, IT, community and social advocacy networks as well as accredited and independent citizens' watchdogs nationwide.

A policy research institute based in UP Diliman, CenPEG is the publisher of a new book, *Was Your Vote Counted? Unveiling the Myths About Philippine Automated Elections*. The book was recently launched back-to-back with columnist Rene B. Azurin's *Hacking Our Democracy*.

(For background, election materials, and other details of this press advisory, please visit [www.cenpeg.org](http://www.cenpeg.org), its election 2013 microsite, and AES Watch Facebook. AES Watch's monitoring Ushahidi-powered website will be up on May 1.)

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