

Poll automation: Make or break for Comelec

Whether modernized or not, no election system will bring democracy to the people and a just government elected unless the systemic problem of fraud which is run by powerful politicians in and out of government is addressed decisively and comprehensively.

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July 21, 2009

Preparations for the country's first fully-automated election 10 months from now are in high gear after the signing of a contract on July 10 between the Commission on Elections (Comelec) and the consortium Smartmatic-TIM. The signing was held despite a motion for a temporary restraining order (TRO) filed by lawyer Harry Roque before the Supreme Court (SC) citing a flawed joint venture agreement between the foreign company Smartmatic and its Filipino partner, along with two other legal and technical grounds.

But nothing is stopping Comelec from going ahead with the automation as poll officials expressed confidence they can hurdle the legal challenge. The highest tribunal had in 2004 nullified a similar contract on poll automation between the Comelec and MegaPacific and this alone is a no small reason to belittle the TRO motion.

The Comelec, an independent constitutional body tasked with managing and administering all elections, exudes confidence that no matter the odds it can open a new page in the country's political history by finally implementing RA 9369 or the election modernization law. For its P11.3 billion automated election system (AES) plan, the poll body brings in what is claimed to be a dominant multinational business company in election automation, a local IT provider, a leading shipping group, and telecommunications giants.

Some 80,000 automation units – Precinct Count Optical Scanners (PCOS) or optical mark readers (OMRs), with another 2,000 on reserve will be manufactured outside the Philippines, then packed and shipped to the country. Its more than one-year calendar also includes the training of about 400,000 teachers who will man the Boards of Election Inspectors (BEIs), about 80,000 IT engineers, and voter's education for the country's 50 million electorate. It must also ensure that the country's infrastructure systems, which include telecommunication networks, internet providers, cell sites as well as road and sea networks not only exist but are adequate and capable of servicing the installation and operation of the AES units to be distributed throughout the country's 80,000 precinct clusters.

Tough question

The tough question is, will the Comelec really be able to do it?

The Comelec's catchphrases for the AES are "Automation means clean election"; "trust the machine." The trouble with these shibboleths is that Comelec officials themselves admit that fraud, which has tainted



the electoral process in recent and past exercises, is something else and that vote buying and other cheating mechanisms may not be prevented. Fraud has been most pronounced and widespread in recent years and it is expected to operate probably with invisible hands resulting in internal rigging, unofficial access to electronic transmission systems, or other means of automated cheating.

The other fallacy is that automation will deter human intervention. Human intervention, per se, is either positive – election is a human political exercise - or negative, hence the intention should be qualified to mean interference or manipulation. Just the same, it is incorrect to claim that automation will have less human intervention. In an ongoing policy study done in partnership with the College of Law of the University of the Philippines, CenPEG has identified at this writing 30+ vulnerabilities of the AES, ranging from registration, to ballot printing, software and hardware systems, spurious codes, transmission, to shipping, hardware, and data centers. The vulnerable spots are not machine-generated but can be targets of human manipulation without being seen by the naked eye. Technology is "cognitive neutral" - it will work according to the operator's command.

It is better for Comelec to be honest about these, to admit that automation will not necessarily lead to clean elections but that it can be achieved or minimized with proper safeguards and security measures, and full citizens' engagement in the whole exercise.

Superman

There is also the problem with the poll body's over-reliance on the winning bidder, Smartmatic-TIM, for the success of the AES to the extent that in one Senate hearing it was revealed that 90 percent of the election management will be in the hands of the private consortium. The poll body may be relinquishing its constitutional mandate to manage and administer the election to a private consortium whose "political neutrality" (Comelec's own ruling) has not been fully established and its partnership and validity of the contract now under question before the high tribunal. Under this situation, who will now be accountable and be subject to lawsuit in case of failure of election and similar cases?

This potential constitutional problem has become palpable given a finding by the Comelec Advisory Council (CAC) in its report of October 2008 about the poll body's lack of IT competence and the imperative of a "change management" in preparation for the automated election. Now after two months of waiting, the Comelec has finally approved CenPEG's request for a copy of the source code for review. This week, the commission's spokesman asked the public for guidelines on how to conduct the review – something that the Comelec itself should have done at the start of its automation preparations this year.

There are more legal and technical issues on the AES that have been raised with the Comelec (see www.cenpeg.org for various reports and news releases) that are numerous to mention in this analysis. On the technical side, is Comelec's lack of database on the Geographic Information System (GIS). The GIS pictures the existence, availability and capability of the country's infrastructure system such as telecommunication, cell sites, internet providers, satellite system, topography, road and sea networks that will service the 80,000 AES machines all over the country. The election modernization law, RA 9369, stresses that the technology should be "suitable to local conditions". At this point nobody has any idea how all the required

infrastructures will work. The GIS, which the Comelec should have completed in 2006, is now left for completion with the winning consortium.

Lack of transparency

Of immediate interest to the country's 50 million voters as well as political parties and poll watchers is the system's lack of transparency and the corresponding adjudication process for election protests. After the voter marks the ballot at the precinct, the rest of the process from scanning, storing, and counting to transmission, canvassing, and consolidation is left with the machine without being seen by the naked eye. Yet election mandates secret/private voting and public counting and the voter has the right know how his/her vote is processed. The Comelec says it will post the election results on the public website – but how many of the country's 50 million voters can access that?

Moreover, voting and counting will be done in 2-3 days but at the cost of the citizen losing his/her right not only to monitor everything but to file election protests given the time constraint. Even if filed, however, will not the lack of clear laws and adjudication process to entertain electronic-generated poll contests – which are anticipated to be numerous – trigger street protests?

There are numerous obstacles that must be hurdled and several safeguards and security systems installed – and for Comelec to tell voters "trust us" and "trust the machine" simply will not bite.

It would have been more sensible for both those who authored the election modernization law and the Comelec to do it slow and in phases, as what the few countries that have introduced electronic voting did. Whether modernized or not, no election system will bring democracy to the people and a just government elected unless the systemic problem of fraud which is run by powerful politicians in and out of government is addressed decisively and comprehensively. In this area, not only the Comelec but also Congress seems to be wanting.

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