



AN APPEAL TO THE COMELEC

FOR THE RELEASE OF THE SOURCE CODE OF THE AUTOMATED ELECTIONS SYSTEM (AES) FOR MAY 2010

August 25, 2009

The Automated Election Law or RA 9369 is a landmark piece of legislation aimed at modernizing the election system in the Philippines. Not only does it recognize the need to pilot test the technology to be used before going full blast, it also ensures that the technology chosen should be "suitable to Philippine conditions."

It may have its own set of vague provisions like Sections 30 down which still allude to manual elections, but over-all it is a law that is unique in that it provides certain major safeguards to help ensure the integrity of the vote, promote secret voting yet transparent and credible counting in the poll automation. Comelec has only to comply with the law's distinct provisions of safeguarding the elections in May 2010 to avoid the dangerous pitfalls of automated disaster.

One of these safeguards though not the cure-all to fraud is the review of the source code. Section 12 of RA 9369 says, "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."

On May 26, 2009, the Center for People Empowerment in Governance (CenPEG) wrote the Comelec requesting for the source code of the counting and canvassing computers as well as the election database and servers. On June 10, the Comelec en banc approved the release of the source code for review through the Minute Resolution delivered to CenPEG on July 10, the day of the contract signing between the Comelec and Smartmatic-TIM. Despite repeated follow ups with the Comelec, however, the source code has not been released yet. Comelec spokesperson James Jimenez says there are no guidelines on the review yet while Atty Jose Tolentino, Project Management Officer says the review is "premature" and that the review will be done in November after customization is over "under controlled conditions." Chairman Jose Melo, on the other hand says the source code "will be available in February" after certification has been done by Smartmatic-endorsed international certification bodies. According to its own Advisory Council in its draft report of October 2008, the Comelec failed to implement this provision in the 2008 ARMM elections "due to time constraint." If Comelec officials continue to delay the release, no independent source code review will ever be done for this historic public exercise.

The source code is a vital safeguard to widespread fraud because it is the set of instructions that will be installed in and used by the program of the computers to ensure the security operating the machines, in the counting, canvassing and electronic transmission of our votes from the precinct to Comelec-designated servers. Under the automation plan of the Comelec, counting and canvassing of the votes will be done secretly by the machines under the full command of the set of instructions to be released and reviewed by the winning vendor, Smartmatic-TIM. How would we know if the program will count and canvass accurately and not be vulnerable to manipulation?

To provide a check and balance, independent IT experts who are known for their probity and integrity should conduct their own independent review of the source code to see if indeed, the counting and canvassing will be done correctly by the computers and that the system is not prone to internal rigging. Only after the source code has been reviewed satisfactorily by all interested parties can it be certified by an independent international body and approved for running the election system for May 2010.

Why is the Comelec dilly-dallying on the release of the source code? Does Smartmatic have the source code? If not, who has the source code? If the source code will be reviewed, will Smartmatic-TIM allow changes to be made in the source code if malicious bugs or errors are found?

In many states in America, requiring immediate disclosure and review of the source code of computerized voting systems is a long-running battle for citizens' watchdogs every election time to ensure that elections are completely transparent, not only on the outside but on the inside operations of the machines.

We appeal to the Comelec to heed the provision of the law, and that of the Honorable Justice Antonio Carpio who made a similar appeal last July 29. "Comelec must give the source code to the political parties and interested groups. They must (be allowed to) take the source code home and study it." We make this appeal as a patriotic duty to make sure that proper safeguards are put in place for the first and biggest election project in the country and Asia.

Center for People Empowerment in Governance (www.cenpeg.org)

August 25, 2009