



Center for People Empowerment in Governance (CenPEG)  
October 5, 2009

## PETITION FOR MANDAMUS vs COMELEC FILED

A petition for mandamus was filed today before the Supreme Court (SC) seeking to compel Comelec to release the election source code for review.

The petitioner, Center for People Empowerment in Governance (CenPEG) which is based in UP, said it was compelled to seek legal intervention after three months of waiting since its request to make it available was approved by the poll body on June 24 this year.

Prof. Bobby Tuazon, CenPEG's Director for Policy Studies, said they filed the petition as an interested group and a citizens' arm, citing the election modernization law, RA 9369, Section 12 [Sec 14]: "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."

The petition was filed by lawyers Aquilino "Koko" Pimentel III and Francisco Joaquin.

Tuazon said Comelec is legally bound to release the source code to interested parties and groups so that it may be reviewed by competent computer experts known for their independence, probity and integrity in the IT hardware and software security industry and are unattached to the vendors or the Comelec.

Source code is the human-readable set of computer program instructions that will command how Comelec's 82,000 voting/scanning machines and nearly 2,000 canvassing machines will operate during the country's first automated election. A prior review of the source code will ascertain that the programs comply with the election law's counting, canvassing, and transmission of the votes as well as identify and fix serious security flaws.

In a related move last Oct. 3, at least 80 IT educators, several bishops, members of Congress, NGO leaders, and governance advocates asked the Comelec for the immediate release of the source code that will be used for the May 2010 automated election.

"We reiterate in strongest terms our call for the Comelec to comply with Sec. 12 of RA 9369 and release the source code of the PCOS-OMR and CCS computer programs NOW before it is too late," the joint statement sent to Comelec read.

While most of the signatories are conducting relief missions for thousands of refugees of Typhoon Ondoy disaster, they said that an appeal must still be put forward to Comelec with regard to the safeguards that must be instituted so as to preempt an automation disaster in May 2010.

The signatories included Bishop Broderick S. Pabillo, chairman of CBCP's National Secretariat for Social Action (Nassa); Alfredo E. Pascual, president of the UP Alumni Association (UPAA); Judge Dolores Espanol, chair of Transparency International-Philippines; Prof. Rommel P. Feria of UP's Department of Computer Science; Profs. Sherwin Ona and Wilmarc D. Lopez, De La Salle University IT department; Dr. Ma. Regina E. Estuar, chair of Ateneo's Department of Information Systems and Computer Science; Dr. Jaime D. L. Caro, chair of UP's Department of Computer Science; Antonio Tinio, national chair of the Alliance of Concerned Teachers (ACT); Rev. Rex RB Reyes, Jr., General Secretary of the National Council of Churches in the Philippines (NCCP); Bishop Deogracias Iniguez, co-chair of the



Ecumenical Bishops Forum (EBF); former Sen. Serge Osmena; Conrado M. Dayrit III, president of STI (San Fernando, Angeles and Guagua); Dr. Pablo Manalastas, IT faculty of Ateneo and UP, and CenPEG Fellow; Rep. Raymond Palatino of Kabataan Party-list; and Fr. Joe Dizon, promoter of Solidarity Philippines.

NBN-ZTE whistleblower Rodolfo “Jun” Lozada, an ICT engineer; lawyer Aquilino Pimentel III, secretary general of PDP-Laban; Bill Luz, chairman of the Movement for Good Governance (MGG); Dr. Judy M. Taguiwalo, co-chair of Pagbabago (Movement for Social Change); and Alvin Peters, president of the National Union of Students of the Philippines (NUSP) also signed.

They added that “the voters must be assured that the machines themselves cannot be used as instruments for cheating, that they have been programmed correctly and are internally resistant to vote rigging. For this, the RA 9369 provides for certain safeguards” such as the source code review.

Despite the Comelec’s en banc approval to make the source code available to CenPEG and other interested groups, poll officials said any release would be “premature” and that it can only be made available at the end of customization in November this year or in February 2010.

The final blow to the call for source code review came from Comelec lawyer Ferdinand Rafanan who said that no source code review will be allowed for CenPEG and only “an international certification agency will do it as a requisite to the Technical Evaluation Committee (TEC).”

Finding the Comelec’s new position as misleading, the signatories said that the certification by TEC through an international entity “is a separate requirement (Section 9) from the mandate to release the source code for review by interested groups (Sec. 12).”

“Of primordial importance are the rights of voters and the integrity of the voting system,” the signatories said. “The review is critical on moral, political, and economic grounds.”

Among the other signatories to the joint appeal are: Sr. Mary John Mananzan, OSB, chair of the Association of Major Religious Superiors of the Philippines (AMRSP); Bishop Felixberto L. Calang IFI, Diocese of Cagayan de Oro City; Renato Constantino, Jr.; and Anthony Ian “Tonyo” Cruz, president of TXTPower.

In a separate statement, Dr Pablo Manalastas, IT Consultant and Senior Fellow of CenPEG expressed grave concern that there may be no source code review done again for the May 2010 election technology as what happened in the 2008 ARMM automated election. The source code review was never done for the 2008 ARMM automated poll while the Comelec Advisory Council (CAC) has recommended its removal from the election law.

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