



NATIONAL CITIZENS' MOVEMENT FOR FREE ELECTIONS (NAMFREL)

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Executive Summary

TERMINAL REPORT

2 July 2010

Overview

Notwithstanding the results of the May 2010 elections with respect to the National Elections, NAMFREL believes that the automated election system employed by the Commission on Elections and provided by Smartmatic is in serious need of review and remedial measures before it is to be used for future elections. While the system counted ballots with considerable speed, it nonetheless lacked sufficient methods for tracing and auditing the entire processes which would have been necessary had any problems arisen which were material to the results of the counting or the canvassing. As it is, while national results were believed to be credible, in part because they matched both pre-election surveys and exit polls, not all of the local electoral results could be relied upon to the same extent.

The mismatching of time and date stamps, the lack of digital signatures, the lack of a complete inventory of PCOS machines (including spares) and CF cards (including all replacements), lack of disclosure of source codes and hash codes, the incompleteness of the Random Manual Audit, the incompleteness of electoral counts on servers of PPCRV, KBP, COMELEC, and the political parties form just a partial list of deficiencies of the overall system. Collectively, these deficiencies led to the lack of traceability and auditability of the process from the time a ballot is inserted into a PCOS machine until it is ultimately counted and canvassed. Had results not matched public expectation, these elections may have been questioned and chaos may have resulted.

While it is not yet clear what events prior to the election led to this situation, it is clear to us that the contract was not managed as proactively as it should have been by the COMELEC. For instance, there were numerous delays in the manufacture of many components, including the PCOS machines themselves. There were poor controls over the printing of the ballots to the formatting of the CF cards. It is our suspicion that not all PCOS machines were manufactured to original specifications; some ballots needed to be hand-trimmed to fit PCOS machines and we have serious doubts whether all PCOS machines were equipped with ultraviolet lamps to detect fake ballots.

The handling of the CF cards has emerged as one of the most critical points of the entire process. While the public was led to believe that PCOS machines were uniquely matched to precincts, it now seems more apparent that CF cards were the ones that were uniquely matched to the precincts and that PCOS machines may have been generic. Moreover, CF cards were not solely

configured at Smartmatic's Cabuyao plant but could in fact be configured offsite. COMELEC itself shipped blank cards and card readers to various stations around the country.

A. Our historical support

For the record, NAMFREL has supported calls for the automation of the counting and canvassing of the elections dating back to the Comelec's original MODEX Program in 1993 introduced by then-Chairman Christian Monsod. It was at that time that different technologies for counting and canvassing votes were first introduced. The legislation for that program was filed in Congress shortly after and the resulting Republic Act 8436 was passed in December 1997.

NAMFREL was a member of the first Advisory Council on Automation to the COMELEC. That committee recommended to the Commission that a pilot or partial automation of some parts of the country be undertaken for the May 1998 Presidential election to test systems which could then be rolled out in full at the 2001 and 2004 elections. Unfortunately, COMELEC decided not to pilot the automation system and instead opted to attempt a full automated system in 2001 using Mega Pacific as a supplier.

In all this time, NAMFREL has been guided by three basic principles:

- (1) that any system procured by the country be done in a transparent and fair manner, free of corrupt practices, and affordable for the nation;
- (2) that proper safeguards be put in place to prevent any electoral fraud but that if any such fraud were attempted or took place, then such acts could be traceable and persons could be held accountable;
- (3) that the secrecy of voting be protected and that counting and canvassing be undertaken in as public and transparent a manner as possible.

B. Our concerns about 2010

By January 2007, without an automated election ever having been run on a national basis, Congress amended the law on automation and COMELEC released its terms of reference on its chosen technology and began its timetable for the 2010 elections. Although NAMFREL was not in full support of the chosen technology, we nonetheless supported the effort but stressed that safeguards be put in place and that the implementation of the project be done in a transparent manner.

Moving fast forward to the May 2010 elections, we expressed some concerns about the Automated Election System in the weeks and months ahead of elections, as follows :

- (1) The number of voters as reflected in the Certified Voters List was too high relative to population;
- (2) The CVL was not being posted up early enough for voters to check their names on the list;
- (3) The Project of Precincts or list of precincts was not being posted up early enough for voters to check their precinct assignments;
- (4) Precincts were being clustered in such a way that would lead to congestion and long lines;

- 11 hours would not be enough time to accommodate all the voters;
- (5) Voters would not know how their votes would be counted as the PCOS machines would not issue receipts for ballots received;
 - (6) The use of portable UV lights to make up for the wrong UV ink would just result in more unnecessary spending without any deterrent effect on detecting fake ballots;
 - (7) The removal of digital signatures would remove accountability for the transmission of data from PCOS machines;
 - (8) The withholding of the source code review by local IT professionals was tantamount to less transparency and could lead to future complaints;
 - (9) The delay in the release of Random Manual Audit rules would lead to ineffective or incomplete audits, at a time when audits were important;
 - (10) There was no review of the back-up or disaster-recovery process;
 - (11) There were no time or date logs on the PCOS machines, making it difficult to undertake a forensic audit of the system;
 - (12) There was no detailed inventory of both the deployed and spare PCOS machines and CF cards;
 - (13) There were concerns about the data security of the CF cards and data transmission procedures;
 - (14) There was no end-to-end test run of the system from voting to canvassing at all levels;
 - (15) There was no full test of the canvassing software.

One week before elections, we came out in the media expressing concerns about the integrity of the AES in light of the discovery by the Boards of Election Inspectors (BEIs) that the machines had counted test ballots wrongly during the final testing and sealing on May 3. We asked the COMELEC to ensure that the PCOS machines be re-tested and certified after the program had been replaced and the compact flash (CF) cards containing this new program had been refitted in all the 76,000-plus counting machines.

We also asked for the full testing of the canvassing systems at the municipal, provincial and national levels. The suspicious and last-minute discovery of the programming error on the PCOS was too discomfoting, especially since there had not been any testing before the public or the congressional committees of the full canvassing system. Such activity would have ensured that "summations of Election Returns to Statements of Votes Cast (SOVs) and Certificate of Canvass (COCs) are carried out accurately" [Namfrel statement of May 5]. Finally we asked that the random manual audit (RMA) be performed immediately after the completion of the transmission of the results. This process was more valuable than ever because of the programming error discovered at the final testing and sealing just days before the polling.

As most, if not all, of these concerns remained unaddressed up to the week before elections, we also supported recommendations for a parallel manual verification count of three positions on all ballots. Given the numerous complaints after the elections, it would seem that addressing the early concerns may have prevented some of the problems that have beset us. The preoccupation with new technology and speedy counting to impress the public came at the expense of greater transparency and accountability of the system.

Vote Buying Returns

While vote-buying has existed for a long-time in Philippine elections, we had noticed a shift from “retail” to “wholesale” vote buying in previous elections (note: “retail” referring to buying of individual votes directly from a voter while “wholesale” involved buying votes at municipal, city, provincial, or higher levels through “dagdag-bawas” operations and the manipulation of certificates of canvas).

For the 2010 elections, we witnessed the return of retail vote buying in many parts of the country. While the shift in vote buying strategy may have been partly due to the inability of traditional political operators to manipulate PCOS machines, the return of vote buying speaks to the poverty of people and their cynicism with politicians and the political system. The lack of ballot secrecy also probably contributed and facilitated the practice of vote-buying.

The going rate for vote-buying ran from a low of P500 to occasional reports of up to P5000. The high rates were attributed to multiple candidates trying to buy a vote from a single voter. In reports coming from NAMFREL field chapters, our chairmen reported that the buying sometimes occurred in two stages – pre-voting (sometimes days before the election itself) and post-voting upon verification. Prior to voting, voters were approached and given partial payments and some form of stub or card. Upon voting, they exchanged the first card with another one of a different color which they used to redeem and claim the second payment. The exchange of cards took place within a voting center or just outside. Cards were exchanged after a verification hand signal was given by a watcher (sometimes identified as a Smartmatic technician) who was close enough to see ballots as they were fed into PCOS machines.

In other cases, two payments were not needed. NAMFREL Chairmen in Bicol reported that the transaction in itself – the promise of exchange of money for a vote or the actual exchange prior to voting – was enough to seal the deal.

Other methods of vote-buying were payment in kind in the form of grocery items or rice or a combination of cash and kind. In some cases, where entire families of voters sold their votes, they were able to raise enough money to purchase appliances and mobile phones. Brisk sales were reported in some places in Mindanao.

Finally, in some cases, there were instances of “reverse vote buying” where voters’ fingers were marked with ink the night before elections in exchange for payment so they would not vote the following day. This was a tactic employed by politicians to make sure their opponents’ followers would not cast a vote.

Recommendations

We have made these additional post-election observations and recommendations. We give these observations and thoughts in the spirit and hope that improvements can be made in future systems and elections, which will hopefully mitigate the types of problems that we experienced in May.

1. The public reporting of electoral results stopped at 90.2% of precincts reported. This reflects that no reports were transmitted or disclosed to the public from some 7,500 PCOS machines. The COMELEC must explain where and why these machines failed to transmit data or why the data was withheld from the public. Such data, if they exist in COMELEC and Smartmatic servers, should have been made publicly available through the KBP or PPCRV servers and to the two main political parties. Such data may become important for comparing with Certificates of Canvass, if the need arises in electoral protests.
2. While the replacement of 76,400 defective CF cards nationwide took less than a week, why is it that six weeks after the elections and based on reports, the PCOS and the CF cards have not been retrieved in full by the COMELEC. It is important that the PCOS and other components of the AES be impounded and in safe custody as there will surely be a need for them to be examined to substantiate claims and for use in election protest cases. COMELEC should complete the recovery of these pieces of equipment and paraphernalia at the soonest possible time as well as account for those Elections Returns and CF cards which have been found dumped or disposed of improperly.
3. At selected random manual audits that Namfrel volunteers had witnessed, there were no representatives of political parties or of the accredited citizens' arm (except in Surigao del Sur) to witness the procedure. Thus, NAMFREL Volunteers were compelled to complete the task and thus filed the following observations:
 - (a) In Precinct Cluster 8 composed of Precincts 32-A, 33-A, 34-A, 35-A and 36-A at the San Perfecto Elementary School in San Juan, the PCOS machine counted 616 ballots although there were only 614 ballots in the box. The BEIs took an hour to check to ensure that their manual count of the number of ballots was correct, but the discrepancy prevailed. This precinct had 896 registered voters and thus had a recorded turnout of 69%.
 - (b) In Precinct Cluster 1223 of Krus na Ligas Elementary School in Quezon City, the PCOS machine counted 743 ballots but there were only 742 ballots in the box. The BEIs also took pains to recount the number of ballots to ensure that they counted correctly. Still the discrepancy prevailed.
 - (c) In Precinct Cluster 1211 at the UP Integrated School in Quezon City, the PCOS machine counted 699 ballots but there were only 698 ballots in the box.
 - (d) In Precinct Cluster 13 composed of Precincts 38A, 38B and 39A in Barangay Calagdaan in the municipality of Cantilan, Surigao del Sur, the PCOS machine counted 507 ballots but there were only 506 ballots in the box.

Before we move to the results of the audit, there is a need to ask the Comelec for an answer as to why it is possible that the PCOS recorded a number different from that of the actual number of ballots in the box.

4. In the example of the Precinct Cluster 8 of San Perfecto Elementary School, the discrepancies between the PCOS count and the RMA count were:

| Position Audited | Total RMA Count | Total PCOS Count | Variance |
|-----------------------------------------------------------|-----------------|------------------|-----------------------------|
| President | 613 | 607 | 6 |
| Vice President | 612 | 610 | 2 |
| Representative | 518 | 518 | 0 |
| Mayor | 551 | 553 | 2 |
| Total | | 2288 | 10 |
| Degree of variance (total PCOS count over total variance) | | | 0.44% or 99.56% accuracy |

In the audit of the precinct cluster 1211 at the UP Integrated School, discrepancies between the PCOS count and the RMA count were:

| Position Audited | Total RMA Count | Total PCOS Count | Variance |
|-----------------------------------------------------------|-----------------|------------------|-----------------------------|
| President | 689 | 695 | 6 |
| Vice President | 695 | 694 | 1 |
| Representative | 612 | 602 | 10 |
| Mayor | 660 | 660 | 0 |
| Total | | 2651 | 17 |
| Degree of variance (total PCOS count over total variance) | | | 0.65% or 99.35% accuracy |

However, we should note that there could be errors committed by the RMA team in their manual appreciation of the ballots. Therefore, there would be a need to determine what standards were used in appreciating the shading of the ovals on the ballot.

The degrees of variance fall below the *Comelec's requirement of 99.995% accuracy rate* during the bidding for the machines in 2009.

5. Forty-two days after the elections, the COMELEC had not published the list of the 1,145 clustered precincts that were selected on May 10 for the RMA, with the corresponding time of audit and the result of the RMA in each location. We enjoin the Comelec to communicate the results of the RMA, considering the value that it will contribute to the on-going discourse.
6. The National Canvassing Board spent a significant amount of time discussing the veracity of the transmitted results because of the absence of the digital signature that the BEIs were supposed to provide. Without it, the understanding is that the BEIs had not attested to the results of the balloting to which they had administered. It must be noted that this safeguard was lifted by the COMELEC itself when it amended its December 2009 General Instructions with its March 2010 General Instructions.
7. The issue of the time logs for the PCOS machines remains an unresolved issue. In a number of instances, PCOS machines' printed logs have indicated transmission dates and times that antedate the election date or that PCOS machines may have been turned on again and operated well after the polls had closed on May 10. The simplistic explanation of the COMELEC and Smartmatic that different machines may have had internal clocks set to different times is unacceptable. The accepted practice of large-scale automation and systems integration projects is

that this most basic of functions is set properly across all components of a system, precisely so that time and date logs can be used for forensic audits of a system. That this can be allowed in a system as sensitive as an electoral system in the Philippines cannot be tolerated.

8. The expenses provided by Congress to the COMELEC for the May 10, 2010 election is estimated at P16.5 billion. Taxpayers deserve to know in sufficient detail how their money was spent by the COMELEC. This report should also include the cost of engagement and the performance of Smartmatic-TIM and other contractors of the COMELEC. As the COMELEC has the ultimate responsibility for the administration of elections, we hope they will be clear with respect to the contractual obligations of Smartmatic-TIM so as to establish clear accountability for these obligations.

The Legal Network for Transparent Elections (LENTE) and other election-monitoring organizations have reportedly been unable to access complete documentation on the contract between COMELEC and Smartmatic-TIM in order to assess the contractual obligations. These documents should be made accessible to LENTE and other groups so that they can help ensure that the terms of the contract between a government contractor and the Filipino people are honored.

On the matter of fraud or manipulation within the AES, we would encourage those who have knowledge to come out with hard facts and data to substantiate their claims and file formal protests before the COMELEC or the appropriate courts. We enjoin the COMELEC to inform the public of the exact nature of these cases and how the COMELEC would address them.

Lastly, in spite of the automation of the voting process, traditional forms of electoral fraud such as vote buying; ballot capturing; use of minors in the campaign as well as in vote buying; threats, intimidation, and violence; and non-observance of secrecy and privacy during voting, remained rampant. There is still a need to emphasize vigilance, voters' education, strict compliance to laws and rules, and prosecution of these electoral offenses no matter how minor they may be perceived.

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