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Election watchdogs call for rejection of Smartmatic's PCOS machines

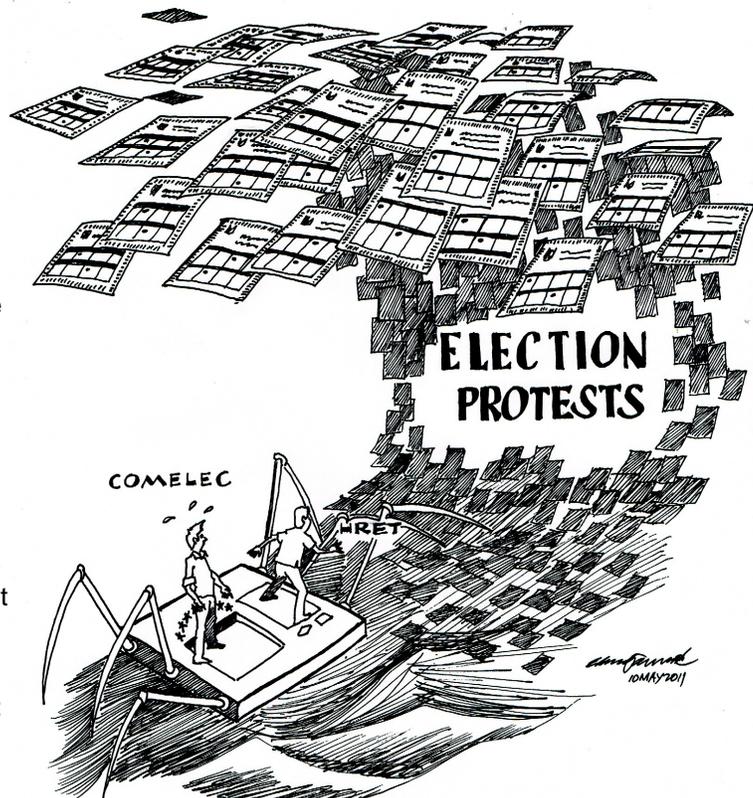
The Automated Election System (AES) Watch strongly urged not to re-use the Smartmatic -TIM provided PCOS technology in the forthcoming Autonomous Region for Muslim Mindanao (ARMM) and in future elections because of the technology's non-compliance with legal requirements, lack of safeguards, unresolved issues and technological difficulties it had brought in and after the May 10, 2010 national and local elections. The AESWatch, of which Namfrel is a member, is composed of 40 non-partisan and independent election monitoring and civil society organizations and the academe.

In a statement released May 6, the AESWatch seeks that the Commission on Elections (Comelec) and the Joint Congressional Oversight Committee (JCOC) consider reverting to the manual system in the upcoming ARMM elections as issues with the PCOS technology are not yet resolved. It also reiterated its call for the disclosure of election documents requested since last year with the election management body and comply with the Supreme Court ordering the release of these public documents.

Furthermore, the AES Watch appealed for support from Filipino IT experts to be engaged and to participate in the automation of the election process to ensure a more transparent and accountable elections. A national Filipino IT (FIT) conference will also be held in June with the end goal of arriving at new election technologies and strategic models more suitable to Philippine conditions. The IT community also advocates for their participation in presenting technologies that can be used in automating elections. It also requested the election body to review its policy of outsourcing election technology to foreign companies.

Earlier, Namfrel cited in its January 2010 newsletter that the reuse of the PCOS technology violates the principle of transparency and competitiveness in government procurement as guaranteed by the Oversight Committee review and the Procurement Law.

Read the AESWatch May 6 joint statement here:
<http://scr.bi/1LcWwe>



SC nixes group's petition to cite Comelec in contempt

The Supreme Court has affirmed the right of the Comelec to impose security measures in allowing third-party groups to conduct an independent review of the source code used in the automation election system (AES) provided by Smartmatic-Total Information Management Corp. during the country's first-ever nationwide

computerized balloting in 2010.

Source code is the human-readable set of computer program instructions used to specify the internal actions to be performed by the SAES-1800 [Smartmatic Auditable Election System] machines and REIS [Real-Time Information System] computers.

In an en banc resolution, dated April 12 but released only last week, the high court rejected the petition filed by the Center for Empowerment in Governance (CenPEG), a public policy center, to cite the Comelec in contempt of court for requiring a set of conditions for this private group to access and review the source code.

The high court said the source code remains the private intellectual property of Smartmatic, so the Comelec had the right to impose "reasonable" security restrictions in a post-election review by CenPEG or any other interested nongovernment organization or political party to prevent the code from being tampered with or unduly appropriated or copied.

"The court denies the motion to cite respondent Commission on Elections in contempt of court for lack of merit," stated the resolution.

Comelec had chosen Smartmatic-TIM's AES technology through a public bidding, in lieu of other proposed systems like the Open Election System (OES), which was being pushed by newly appointed Comelec Commissioner Augusto Lagman and other CenPEG-allied personalities and partner-NGOs. OES provides for a mix of manual voting and computerized canvassing as against the full computerization model of Smartmatic-TIM's AES.

The high court acknowledged in its decision the right of CenPEG and other groups to conduct a review of the source code as provided under Section 12 of Republic Act 9639, or the automated elections law, and in keeping with the people's constitutional right to information on matters of public concern.

But in the same ruling, the court noted that even the Constitution recognizes that the exercise of this right to information is "subject to such limitations as may be provided by law."

In the case of the source code used in the May 2010 elections, the Comelec imposed the following eight conditions in allowing CenPEG to conduct a review:

- 1.) Entities interested in conducting a source code review must signify their interest in writing for approval of the Comelec;
- 2.) Entities approved by Comelec shall sign a nondisclosure agreement before they are allowed to conduct the source code review;
- 3.) Entities which will conduct the source code review shall submit to the Comelec the methodologies they propose to use;
- 4.) Comelec shall provide a secure and enclosed location/facility for the conduct of the source code review, and all entries and exits into the facility shall be properly recorded;
- 5.) A read-only copy of the source code shall be provided on secured Comelec workstations in the secured location/facility;
- 6.) No copies of the source code or any part thereof may be taken out from the secured location/facility;
- 7.) No electronic devices of any kind, including but not limited to laptops, mobile phones, cameras, USB drives and other storage devices shall be permitted inside the secured location/facility; and
- 8.) Each entity that conducts a source code review shall submit a report to the Comelec after the review period.

It will be recalled that in a 7-page decision passed in September 2010 (<http://bit.ly/9ka5UG>), the Supreme Court has ordered the Comelec to reveal the source codes of Smartmatic's automated system used in last year's May elections, granting a petition for mandamus filed by CenPEG. The Comelec has yet to comply with said ruling. (Sources: PDI / ABS-CBN)

Update on COMELEC manual reviews

After the first automated elections in May 2010, the Commission on Elections has received election protest cases filed since last year and towards the end of March this year, and has started to conduct manual reviews of the ballots from precincts that were predetermined by protesting candidates. Revision committees were formed to physically review and appreciate the ballots presented for the recount. These committees were headed by Comelec lawyers, and participated in by lawyers and watchers representing the parties concerned. Following are some cases that Comelec has acted on and their status as of last week.

Mayoral Position, City of Manila:

- Protest case was filed by Lito Atienza against incumbent mayor Alfredo Lim for “massive irregularities and errors in canvassing and counting”. (source: PDI)
- Review was able to be observed by Namfrel representatives.
- The review was headed by Electoral Contests Adjudication Department (ECAD) 1st Division of the Comelec.
- Manual review of ballots started on March 29, 2011 and was halted on April 12, 2011. Only 195 out of the 200 identified ballot boxes were opened; the remaining five were in the possession of the HRET for another protest case.
- Votes were reviewed from at least one compact flash (CF) card as the ballots were wet and unusable when ballot box was opened. The images from the CF card were printed on legal-size paper which were then used in the revision process.
- Resumption of the review for the five remaining ballot boxes will be on May 13, 2011, in the premises of the House of Representatives Electoral Tribunal (HRET).
- No hearing has been conducted yet to present observations noted during the manual appreciation of the ballots by the revision committees.

Mayoral Position, City of Davao:

- Protest was filed by former Rep. Prospero Nograles against incumbent mayor Zara Duterte for alleged fraud and irregularity, including “the absence of the former’s poll watchers during the removal of compact flash cards” from the counting machines days before the election day in May last year. (philstar.com)
- The revision was headed by ECAD 2nd Division.
- Namfrel representatives were able to witness the last one and a half days of the review.
- Manual revision started on April 11, 2011 and ended on April 15, 2011.
- Votes were reviewed from at least one CF card due to absence of ballots when one ballot box was opened.
- No hearing has been scheduled yet for the presentation of the findings during the review as exhibits.

Mayoral Position, Himamaylan City, Negros Occidental:

- Protest was filed by Antonio Gatuslao against incumbent mayor Agustin Bascon.
- ECAD 1st Division headed the revision proceedings.
- An ECAD staff confirmed over the telephone that the manual review for this case has been done and no hearing has been set yet for the presentation of the findings noted by the revision committees.
- Comelec was allowed by the Presidential Electoral Tribunal (PET) to access CF cards to resolve this case.

Vice-mayoral Position, San Jose City, Nueva Ecija:

- Ferdinand Dysico filed the protest case against incumbent vice-mayor Jose Felimon.
- ECAD 1st Division headed the review proceedings.
- No other details were gathered, but per phone conversation with an ECAD staff, the review was finished and findings were gathered and will be presented in a hearing that is yet to be scheduled.
- Comelec was authorized by PET to use the CF Cards to resolve the case.

Mayoral Position, Taguig City:

- Former Supreme Court Justice Dante Tiña filed the protest against incumbent mayor Laarni Cayetano.
- Mayor Cayetano moved to have the protest stopped, but was later on junked by the SC and Comelec was ordered to conduct the .
- Comelec Commissioner Elias Yusoph signed a decision for the 2nd Division ruling that the 373 contested ballot boxes be retrieved from Taguig City. Comelec is yet to set the date for the revision.

Vice-Gubernatorial Position, Cebu:

- Protest was filed by Glenn Soco against late Vice-Gov. Gregorio Sanchez, who died on April 29, 2011 of lung cancer.
- Protest was filed on grounds of massive fraud and immense irregularities during election period.
- Despite the former vice-governor's demise, review will proceed. If the results of the review will not affect the result of the election for the position, acting vice-governor and Provincial Board Member Agnes Magpale will be proclaimed as the new vice-governor.
- Comelec is yet to set the date of the revision process.

Vice-Mayoral Position, San Fernando City, La Union:

- Pancrasio Nisce filed the protest case against incumbent vice-mayor Hemenegildo Gualberto
- PET has authorized Comelec to use CF Cards to resolve the dispute.
- Case is still pending and waiting for Comelec's further action.

Muntinlupa City:

- For mayoral position, Jaime Fresnedi filed the protest case against Aldrin San Pedro, while for vice-mayor, Marissa Rongavilla protested against incumbent Artemio Simundac.
- These cases are still waiting for further action by the Commission on Elections.

Mayoral Position, Angeles City, Pampanga:

- Francis Nepomuceno filed the protest against incumbent mayor Edgardo Pamintuan.
- Protestant was instructed by Comelec to bring the 37 ballot boxes contested from Pampanga to Comelec National Office.
- The ballot boxes are already in the custody of Comelec national as of 4 May 2011. One of the lawyers of the ECAD 2nd Division said that the review has not been scheduled yet.
- The review will be conducted by six to seven revision committees.

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