

Comelec Resolution No. 9104 raises doubts and inconsistencies on the recounting procedure of the Comelec

The Comelec on November 30 promulgated Comelec Resolution (C.R.) No. 9104 to clarify the procedure for the recount of ballots but instead such resolution raises doubts and inconsistencies with other rules on the recounting of ballots. Among the rules that should be reviewed are:

- Section 8 of C.R. No. 9104 stated that in the event that the Division of the Commission finds the integrity of the ballot box and ballots was compromised, it shall order the Recount Committee to utilize the picture image files corresponding to the physical ballots contained in the tampered ballot box for recount purposes. The resolution itself stated that the recount process is by means of re-feeding physical ballots in another PCOS machine to generate new election results and comparing it to the election results generated in the May 10 elections. This means that the recount will be done through comparison of results. If the physical ballots have been proven compromised, tampered or substituted therefore there is no comparison that can be done. Thus there are no valid ballots to refeed and no results can be regenerated. How will the recount procedure can be done? The ballots that were compromised may put into question the CF card used in May 10 elections generating its result. The Comelec did not state the method in assuring the integrity of such CF cards though C.R 8804 mandates to provide a technical person to authenticate the picture image files.
- Section 11 of the said resolution mandates that picture image files shall prevail over physical ballots in all instances enumerated. Sec. 11 mandated that if the total number of physical ballots does not match the total number of picture image files of ballots, the total number of picture image files shall prevail. If a physical ballot has no corresponding picture image, such physical ballot shall not be included in the recount proceedings. However if there are picture images that have no corresponding physical ballots, the picture image files shall still be included in the recount proceedings. In case that the shaded oval in the physical ballot has discrepancy over the picture image files, the results shown at the bottom- right of the picture image shall prevail.

This is a double disenfranchisement of votes considering that rejected ballots are also not included and reconsidered in recounting the result. Omnibus Election Code Sec. 255 mandates that ballots be examined and the votes be recounted. Rule 15 of C.R 8804 mandates the Recount Committee “that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection.”

- Section 11 in the validation and recount procedure stated that if the PCOS machine being used by the Recount Committee does not accept the physical ballots which are considered valid in the May 10 elections, there will be one PCOS machine that will be provided to re- feed said physical ballots. What if these physical ballots are still rejected by the contingency machine, is there any procedure left to remedy the technical glitch?

It is highly recommended that the Comelec en banc review the rules of procedure in recounting of votes. Obviously C.R 9104 favors electronically generated results over physical ballots where voters shaded their actual votes.

Comelec Resolution No. 9107 vague

The Comelec on December 9 released Comelec Resolution (C.R.) No. 9107 concerning the disqualification of winning barangay officials who served three (3) consecutive terms of office in the same position. The resolution mandates the Department of Interior and Local Government (DILG) to formalize by way of a petition for disqualification the list of Barangay officials serving three (3) or more consecutive terms in office. The list was earlier submitted by DILG to the Comelec. The resolution further mandates the DILG as the complainant of such disqualification cases. The Comelec will adopt a Summary Procedure after a verified petition has been filed in the Comelec Clerk Commission. The division assigned to which the case has raffled shall shall pen the decision within three (3) days from the date of consultation.

Prior to the promulgation of C.R No. 9107, C.R. No. 9077 was promulgated on October 23 to suspend the proclamation of winning barangay “multi- termer” candidates and assigned the Comelec Law Department to file motu proprio cases against them. This was later amended by issuing C.R No. 9100 on November 15 lifting the suspension and revoking the authority of the Law

Department by allowing such proclamation to afford due process to all the affected multi term candidates. On December 5, DILG reported 12 out of 26 multiple termers who ran on October 25 were proclaimed.

With the issuance of C.R. No. 9107, the Comelec cannot immediately disqualify a candidate without due process even if the candidate has been known to served three terms. In this case the Comelec should determine whether or not the three term limit rule has been fully served or if there has been an interruption of the continuity of their service. Voluntary renunciation does not qualify as an interruption of service but by the "operation of law". Preventive suspension also is clarified by the Supreme Court as an effective interruption of the service. "Operation of law" can be exemplified in the case when a term of service is interrupted upon the assumption in the event of vacancy of the next higher position because of the retirement or death of the person to be replaced. This means that an official would lose his title and the right to serve from his position. Other instance of involuntary renunciation of service or that there was a break or term served is when a person was removed from his office due to a case filed against him and he was returned to his post because he won the said case.

The recent promulgated resolutions designated explicitly the power to complain and file disqualification cases against these multi termers to the Law Department and later to the DILG as the complainant. The Comelec did not include in C.R 9100 the right of any voter to file a quo warranto case on the ground of ineligibility within ten days after the proclamation of multi termers. Such legal basis is found in COMELEC Resolution No. 8804 [22 March 2010] and COMELEC Rules of Procedure dated 15 February 1993. In filing a quo warranto case, any voter is given 10 days after proclamation to file the petition in the Comelec. These can be suspended if new resolutions have been promulgated concerning the filing of a disqualification case. Since such right to file quo warranto is not included in C.R 9100 it is also not clear now when would be the start and the deadline of filing such petition. Charges of material representation may also be filed for violating Sec. 262 of the Omnibus Election Code and criminal charges of perjury and prolonging performance of duties and powers against these multi-term candidates. Both the election and criminal offenses carry a penalty of one to six years of imprisonment as well as removal of right to get elected in public office and to vote.

NAMFREL found out through a phone call to the office of the Comelec Clerk of Commission that no disqualification case has been submitted against the 12 proclaimed multi termers by the DILG. The DILG Legal Department also said that they have not received an official memorandum regarding the case. The DILG also stressed that their department is not the proper party/agency to file such disqualification cases because according to the Omnibus Election Code, the resident voters of the barangays where multi termers allegedly won should file the case.

NAMFREL provides briefing to European Election Observers

Mr. Damaso G. Magbual, Asian Network for Free Elections (ANFREL) Chairman and a member of NAMFRELs National Council and Executive Committee member, recently gave a series of lectures in a forum entitled "A Briefing of European Union (E.U.) International Observers" from December 1 to 2, 2010 at the Dolce Hulpe Hotel in Brussel, Belgium. The training seminar was participated by over 400 participants to include E.U. election observers who monitored the recently concluded Afghanistan and various African elections. Mr. Magbual is an Accredited Senior Trainer-Lecturer of the E.U.

There were three issues addressed by Mr. Magbual. The first issue was on the Importance and Relevance of International Election Observers. He stressed that international election observers are still important because they have a wider coverage while monitoring elections unlike domestic observers who concentrate in certain areas of concern. International observers are also more familiar with the cultural and social aspects of a country it is observing because it can efficiently source data from various domestic election observers. The second issue was on "International Observers coordination with Domestic Observers". He said that the domestic observers in other countries usually provide data on their elections to international observers especially in a nontransparent environment to take advantage of the fact that international observers' activities are keenly monitored by the local and foreign press. Assessments of international observers highly influence the perception of the legitimacy and credibility of an election. In contrast to the Philippine setting - domestic election observers play the primary role and take center stage in monitoring the elections. The last issue covered was on "How can international election observers support domestic observers?" Mr. Magbual discussed the unraveling phenomenon and problem with domestic observer groups turning to an entrepreneurial activity. He cited the case of Indonesia of seven domestic election monitoring organizations which existed in 1999 but now cease to exist. Collectively these groups amassed 12 million dollars from international funders without any concrete and sustained output. He further mentioned that there is a need to help domestic observers to sustain their existence by tying up with long term activities like good governance projects similar to NAMFRELs medicine, textbook, and procurement monitoring projects. The E.U. may support commitments in the development of democratization as a post election activity. In line with this the E.U. is planning to organize similar forums next year to tap the experience of Asian election monitoring organizations.

[Sources: Comelec data, NAMFREL data]

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